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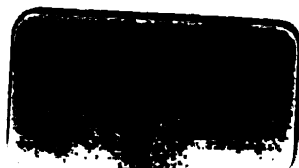
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———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

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The Legal Observer.

SATURDAY, NOVEMBER 6, 1841.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

COMING EVENTS.

IN commencing a new volume of our work, we are desirous of looking forward to those topics which will in all probability form the principal part of its contents. We conceive that many important reforms will be brought forward in the next Parliament. Sir Robert Peel has led the way in law reform for the last twenty years, and it is not likely that he will hold his hand when he has not only full power to carry out his wishes, but when his party is pledged to bring forward remedies for all admitted grievances. We conceive, therefore, that those questions connected with this subject, and as to which, session after session, *bills* have been brought in, will now be settled, and form the materials for acts of the realm. We wish, therefore, briefly to advert to them, and to state our opinions respecting them. First, and foremost undoubtedly, stands the question of Chancery Reform, which is becoming daily more the subject of discussion. Our readers will probably remember a series of letters on this subject, which were contained in our twenty-first volume, and we agree, in the main, with the reforms there suggested. Our readers will easily see, on referring to them, how much remains to be effected. The only events which have occurred since they were written, are, *first*, the appointment of two Vice Chancellors, and secondly, the promulgation of Lord Cottenham's Orders.

These steps are both good in themselves, so far as they go. The new Judges will do much to dispose of and keep down the arrear of causes, when set down for hearing. The new orders will also do much good. We have already shewn the effect they have on equity pleading (see Vol. 22, p. 386);

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and they will certainly greatly shorten answers, and in some cases dispense with them altogether. But the reform must go further than this. The parties must have the power of dispensing with pleadings altogether, if they so please, just as Lord Cottenham has allowed them to dispense with one portion of equity pleading—answers, if they so please. If any one supposes that by this we mean that a bill in equity should be abolished, they either misconceive or wilfully pervert our meaning. This was never proposed. All that has been said (and the more we reflect on it, the more fully are we confirmed in the correctness of the recommendation) is, that in *many* cases, not in all, pleadings are unnecessary. In a great many cases all the facts are admitted; what is wanted is either an adjudication as to the law of the case, or an application of the powers and jurisdiction of a Court of Equity. In some cases no one disputes that the proceeding by bill and answer is a very proper and useful one. But to represent this system as applicable to all, and approaching very nearly to perfection, is to shew a complete ignorance of all that has been going on respecting it for many years. “I entertain a strong conviction,” says Mr. Garratt, in his useful pamphlet, p. 7, “the result of more than a *quarter of a century* devoted in a great measure to equity drawing, that *the faulty system of equity pleadings*, and the clumsy, inefficient, and unsatisfactory method in which Courts of Equity receive evidence, and investigate litigated questions of fact, lie at the root of those evils in the system which are felt by the public; and that until the legislature strikes at these fundamental defects, all other attempts at reform in Chancery will be wholly inoperative.” The present Master of the Rolls also says, in his examination before the Chancery Com-

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mission, "I conceive that unnecessary delay, vexation, and expense may be ascribed to the established process and practice of the Court, to the *established system of pleading*, and to the established mode of obtaining evidence." Min. Ev. q. 3, p. 145. And abundance of other evidence to the same effect may be found. Indeed, no one who has read the evidence taken by the Chancery Commissioners can rise with a favourable opinion of equity pleading, and not admit that it is open to the gravest objections. Even the Chancery Commissioners themselves, who are certainly not very strong reformers, and who, indeed, were not directed to consider the question of equity pleading at all, recommend, by their 123d proposition, that in some cases a bill should be dispensed with, and that a petition might be advantageously substituted, "where the resistance to the payment of a legacy arises wholly from a doubt as to the construction of the gift in the will." Report 56. It must be admitted that when the late Lord Chancellor of Ireland said, "I believe that in various cases where property is to be administered by the aid of the Court, bills and answers may be entirely dispensed with; and that upon a short petition there may be at once a reference to the Master;" if he erred, he certainly did not err alone; and his opinion, if we mistake not, is shared by more than one of the *present Judges*. In the main, therefore, we adhere to the opinions with respect to Chancery Reform advanced by our correspondent, until they have been displaced in our minds by some superior argument.

Another subject which will probably come before Parliament is the Registration of Voters; and here, we have little doubt, that the opinions frequently advanced in this work will be adopted. With every respect for the existing body of Revising Barristers, we have always maintained that after the first revision under the Reform Act was over, the duty should be committed to a permanent and limited body, and we have brought forward, as an illustration of the benefit of a similar change, the appointment of six permanent Commissioners of Bankrupt in the place of the seventy whom they displaced. The difficulty as to the patronage—a serious one, we admit—ought not to stand in the way of the benefits to be derived from the measure.

There is another very important subject, which has occupied public attention for many years, and been a fruitful topic in our own pages. We mean the establish-

ment of Local Courts. We see no reason to change our opinion in this matter. We have had repeated opportunities of considering the question, and the same insuperable difficulties appear to beset every thing like an extensive measure of this nature. We, of course, speak at random. We know not if any measure for the establishment of Local Courts be in contemplation, and we know not what the particular measure would be; but any bill going the length of establishing Local Courts throughout the country, we shall think it our duty steadily to oppose. It may be a difficult task to do this—it may be that the former opponents of the measure may now support it; but we shall still persevere. The injury the profession might sustain, we admit, is not to be materially considered; but we believe the measure would be injurious to the country—injurious to the suitor—injurious to the public at large. A measure which shall simply facilitate the administrative portion of legal business in the provinces we will willingly support, but further than this we are not disposed to go. We think the Superior Courts should be rendered as easy of access as possible—the opinions of the superior Judges, both of Common Law and Equity, should be obtainable at as little expense as possible; but we are not inclined to depose them,—and this an extensive scheme of Local Courts would do.

CHANGES IN THE LAW, IN THE LAST SESSION OF PARLIAMENT.

EXPIRING LAWS.

5 Vict. c. 7.

An act to continue until the thirty-first day of July, one thousand eight hundred and forty-two, such laws as may expire within a limited period. [5th October, 1841.]

1. *Laws expiring at the end of this session, or on or before the 1st January, 1842, continued till the 31st July, 1842.*—"Whereas there are divers laws and enactments which have lately expired, or will expire at the end of this session of Parliament, or on some specified day before the first day of January, one thousand eight hundred and forty two, and there may not be sufficient time during the present session of Parliament for a particular examination and due consideration how far any of the said laws may be fit to be further continued; be it therefore enacted, by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons, in this present parliament assembled, and by the authority of the same, that all the laws and enactments in force on the

twenty-third day of June, one thousand eight hundred and forty-one, and for the continuance of which, no particular provision has been made by any act passed during the present session of Parliament, and which would expire at the end of this session of Parliament, or before the first day of January, one thousand eight hundred and forty-two, shall be, and continue in full force, to all intents and purposes, until the thirty-first day of July, one thousand eight hundred and forty-two, and such of the said laws or enactments which may have expired, shall be revived, and shall continue in force to all intents and purposes, until the said thirty-first day of July, one thousand eight hundred and forty-two, anything contained in the said laws to the contrary thereof, in any wise notwithstanding.

2. *Commissioners appointed under 6 & 7 W. 4, c. 71, to continue in office only until the 31st July, 1842.*—‘And whereas by an act passed in the seventh year of the reign of his late Majesty, intituled, ‘An act for the Commutation of Tithes in England and Wales,’ it was, among other things, enacted, that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person appointed under the said act, should hold his office for a longer period than five years, next after the day of the passing of the said act, and thenceforth until the end of the then next session of Parliament; and that after the expiration of the said period of five years, and of the then next session of Parliament, so much of the said act as authorizes any such appointment should cease: and whereas it is expedient that the said commission should be further continued;’ be it enacted, that so much of the last recited act, as is herein-before recited, shall be repealed; and that no commissioner or assistant commissioner, secretary, assistant secretary, or other officer or person so to be appointed, shall hold his office for a longer period than until the thirty-first day of July, one thousand eight hundred and forty-two; and after the said thirty-first day of July, so much of the last recited act, as authorizes any such appointment, shall cease.

POOR LAW COMMISSION.

5 Vict. c. 10.

An act to continue the Poor Law Commission until the thirty-first day of July one thousand eight hundred and forty-two.

[7th October, 1841.]

4 & 5 W. 4, c. 76. *Poor Law Commissioners, &c., further continued in office till the 31st July 1842.*—‘Whereas by an act passed in the fifth year of the reign of his late Majesty, intituled, ‘An act for the amendment and better administration of the Laws relating to the Poor in England and Wales,’ provisions were made for the appointment of Poor Law Commissioners, assistant commissioners, secretaries, and other officers, and for their continuance in office until the end of the session of Parliament held next after the

fourteenth day of August, one thousand eight hundred and thirty-nine; and by another act passed in the third year of the reign of her present Majesty, provision was made for their further continuance in office until the fourteenth day of August, one thousand eight hundred and forty, and thenceforth until the end of the then next session of Parliament; and by another act passed in the fourth year of the reign of her present Majesty provision was made for their further continuance in office until the thirty-first day of December, one thousand eight hundred and forty-one; and it is expedient further to continue such provisions: be it therefore enacted, by the Queen’s most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and commons in this present parliament assembled, and by the authority of the same, that every Poor Law Commissioner appointed by his late Majesty, or appointed, or to be appointed by her Majesty, the Queen, her heirs and successors, and every assistant commissioner, secretary, and other officer and person, duly appointed by the Poor Law Commissioners, shall be empowered (unless he shall previously resign, or be removed) to hold his office, and exercise the powers thereof, until the thirty-first day of July, one thousand eight hundred and forty-two; and until the expiration of the said period, it shall be lawful for her Majesty, her heirs, and successors, from time to time, at pleasure, to remove any of the said commissioners for the time being, and upon every or any vacancy in the number of commissioners, either by removal, or by death or otherwise, to appoint, by warrant, under the Royal Sign Manual, some other fit person to the said office, and until such appointment it shall be lawful for the surviving or continuing commissioner or commissioners to act as if no such vacancy had occurred.

2. *Act may be amended this session.*—And be it enacted, that this act may be amended or repealed by any act to be passed in this session of Parliament.

The following are the other public acts passed during the last session:

1. An act to authorize her Majesty’s commissioners of woods, to grant building leases of the royal kitchen garden at Kensington, and to form and improve other royal gardens; and to enable the said commissioners to purchase lands of copyhold or customary tenure.

2. An act for annexing the mansion house, gardens and grounds at Frogmore, part of the land revenue of the Crown, to Windsor Castle.

3. An act to alter an act of the eleventh year of King George the Fourth, for amending the laws relating to the pay of the Royal Navy, and an act of the fifth year of King William the Fourth, to alter the provisions of the said act.

4. An act to continue for three years, and from thence to the end of the then next

session of Parliament, two acts relating to the care and treatment of insane persons in England.

5. An act to make further provisions for the administration of justice. (See 22 L. O. 484, 499, 514.)

6. An act to amend an act made in the twenty sixth year of the reign of his Majesty King George the Third, intituled, "an act to empower the Archbishop of Canterbury, or the Archbishop of York, for the time being, to consecrate to the office of a bishop, persons being subjects or citizens of countries out of his Majesty's dominions."

8. An act for funding Exchequer bills, and for making provision for the service of the year one thousand eight hundred and forty-one.

9. An act to provide for payment of the persons employed in taking account of the population in England.

11. An act for raising the sum of ten millions, six hundred and twenty-six thousand, three hundred and fifty pounds, by Exchequer Bills, for the service of the year, one thousand eight hundred and forty-one, and for appropriating the supplies granted in this session of Parliament.

POINTS OF PRACTICE, BY QUESTION AND ANSWER.

BANKRUPTCY PROCEEDINGS.

1. If the trading of a bankrupt be proved by the proceedings under the fiat, has the opposite party a right to look at any, and what part of the proceedings?
2. When can a bankrupt be discharged from arrest for debt, with reference to his certificate, and the completion thereof?
3. Can any parol evidence be received to explain depositions taken before the commissioners?
4. Can the production of proceedings in bankruptcy, be enforced in an action collateral to the fiat?
5. If there has been no notice to dispute the act of bankruptcy, &c., are the proceedings conclusive evidence of the facts stated therein?
6. What hand-writing must be proved, or from what custody must it be shewn that the proceedings have been brought, to render them receivable in evidence?
7. Can an examination before the commissioners be given in evidence, if such examination has not been signed?

ACTIONS IN BANKRUPTCY.

8. In an action by assignees, can the defendant plead a tender as to part, and give evidence of a set-off as to the remainder, without pleading the set-off?
9. In an action of trover by the assignees, must a demand and refusal be proved in all, or what cases?

10. Can an assignee of a bankrupt or insolvent attorney, sue for the amount of his bill of costs, without delivering a signed bill?
11. Must the name of the official assignee be joined in an action by the other assignees, and if omitted, can it be supplied?
12. Can a plea of bankruptcy be effectually met by proof that the certificate was obtained by fraud?
13. The assignee of a bankrupt after action brought, died, and a new assignee was appointed, what is the course of proceeding?
14. Can an action be brought after the three months limited by 6 G. 4, c. 16, s. 44, against assignees?
15. When must an objection to the sufficiency of depositions to establish an act of bankruptcy, be made?

DEFENCE OF THE ANNUAL CERTIFICATE DUTY.

Mr. Editor,

THE Attorney's Annual Certificate Duty seems to be a never-ending topic with some of your correspondents; lawyers in general thinking it much better to pay than to agitate on their own account.

You formerly obliged me by inserting a paper in favour of this duty, and some of my reasons have been partially reiterated by your correspondent, A. P., with whom I confess myself astonished, at finding you a repealer: and as I fancy you occasionally sit in some of the high places of our profession, permit me most respectfully to say, I exceedingly regret it.

The history of the profession shews that the state has long exercised a controlling influence over its members, and as every one who employs them, puts his honour, his property, or his family in some measure, into their hands, this interference is praiseworthy, and on the part of the public, not only expedient, but necessary. If your correspondents would reflect on this, they might possibly discover the appearance of a degradation; but I deny that there is any semblance of it in the imposition of this duty.

It was, I think, a complaint made by Adam Smith, that not one in twenty who were in the profession, were capable of pursuing it, and the then Chancellor of the Exchequer gratified the linc-eyed attorneys of his day, and supplied the wants of the country, by laying on this much-vilified duty.

But it may be said, that it is only the relic of the shop-tax, and that the latter on petition was repealed; the then race of attorneys, however, were neither shop-keepers nor petitioners, being of opinion that it was desirable, and as the amount was then of some importance, it, no doubt, for a time, operated as a check upon the professional increase.

The war, in which all classes and interests concurred, not only developed the magnitude

of our manufacturing and commercial resources, but had an important influence on the profession, by inducing those engaged in such pursuits, to seek the improvement of the position of their sons, by making gentlemen, in other words, attorneys of them. To those individuals, the certificate and stamp duties were not worthy of consideration, when the rage for the profession commenced.

From such means, the profession has undoubtedly shared in the vicissitudes of the times, and besides being considerably overstocked, it is to be feared, that an unprofessional competition has sprung up, which will require a more cutting remedy than the repeal of, what your Wolverhampton correspondent with true agitating fervour, calls a *poll-tax*, but which I will still continue to designate by the less-excitabile name of the Certificate Duty.

Looking at the vast interests which are committed to the profession, and charitably reviewing the professional corps, I heartily approve the *regulations* affecting the certificate, at the same time, admitting that the duty has long ceased to operate as a preventative of admission, and without entertaining any exaggerated notion of the emoluments of the profession, I consider them to be entitled to a high place in the scale of taxation. That the professional business of the country is immense, the official returns for stamps and other sources sufficiently prove; and although the interests of the public have led to material reductions in the charges, they still yield an ample recompence for the *skill and labour employed*, and of this opinion were the legal authorities who settled them; it is, however, unhappily too true, that some of the fixed fees are very frequently evaded, and as true, that every evasion is derogatory to the individual and to the profession. On this ground, alone, I humbly submit, that the duty is perfectly justifiable, and that its infliction furnishes no respectable, and consequently no sufficient ground for its repeal.

I regret that in your late paper on this subject, you have adverted to the clergy, because I do not consider their's as a parallel case. First, because their incomes are generally fixed; and secondly, because they are low, upwards of 4000 averaging under 800l., and of 1000 under 900l., and their whole body averaging under 3000l. per annum,—incomes which would be scornfully rejected by the profession, and which certainly ought not to be annually reduced by such a duty as this.*

You certainly puzzle and surprise me, by the following: (Vol. 22, p. 419,) "Hawkers and pedlars pay for an annual license, so do vendors of liquors, and pawnbrokers do the like—game cannot be sold without a license, but we know of no other instance in which the

diffusion of knowledge^b is thus annually taxed"—because, Sir, I cannot discover the connection between the selling of game, and the diffusion of knowledge; and secondly, because under the general head "licenses," I find there is a revenue of 906,922l., not an eighth of which *can* be paid by the attorneys; consequently the hawkers, the liquor-sellers, the pawnbrokers, and dealers in game, must either be very numerous, or heavily taxed; but I think there are auctioneers, horse dealers, and others, to be added, all of whom have an equal right to be relieved, and who will not act with corresponding selfishness, if they do not take up the trade of agitation, until they also get a repeal, in which the attorneys will be bound to help them.

You say the *barrister* is not taxed,—nor in strictness is he paid; but if a bill were brought in to tax him, or compel the attorneys to give lesser fees, it certainly ought to pass; the unwilling profession of the attorneys, on the one hand, and the expectations of the bar, on the other, requiring some check, the *present honorary system* being ruinous to the client. The new Chancellor of the Exchequer might do worse than adopt the hint here thrown out, the bar being "all honourable men."

Again, you say that neither the architect nor the surveyor pay any thing—neither do the cooper, the butcher, and fifty others, and (in order to carry out the idea, which I fancy was floating in your mind when you penned the above) we must have a poll tax, which would be the precursor of Universal Suffrage, *alias*, Universal Confusion; but this is an offence against society, with which the attorneys have never yet been charged, nor do I expect they ever will.

You also say, why should not the judge pay it? The answer is, because he is mostly a looser by the honour, and it would be derogatory to the profession to allow it, and even supposing it did, the salary must be increased, and then *cui bono*?

But you have adverted to an income tax. You say, "are they then so very well paid? if we have an income tax, we should like to know, how many of them will say that they receive 10000l. a year?" And so should I. 10000l. a year, seems to be your minimum of what an attorney's gains ought to be.

After all, Sir, agitate as we may, it can be productive of no other effect than the paltry embarrassment of the government, which would be compelled to retaliate in defence of the public welfare, the means of which it has ample store for doing,—abolish our monopoly,—throw open the profession,—establish free trade, and then farewell to its respectability. Much, I admit, has been done of late years, to denude it of its profits, but the realization of this would be its death-blow, and I hope we shall not be guilty of the folly of meriting it.

U. Z. L.

* We suppose the attorneys have no wish to see the clergy or the faculty taxed; they merely wish even-handed justice. We see that our able contemporary, the *Law Magazine*, is with us on this point. Ed.

^b The diffusion of legal knowledge was obviously meant. Ed.

EQUITABLE MORTGAGE BY DEPOSIT OF TITLE DEEDS.

THE practice of depositing the title deeds of real property, by a debtor, with his creditor, as a security for a pre-existing debt, or for an advance then made, accompanied or not by a written memorandum explaining the object of the deposit, instead of having recourse to the more expensive, though safer method of a mortgage deed, appears, in some places, to form almost as usual a plan of effecting the intention of borrower and lender, at least in cases of small debts or loans, as the more comprehensive legal mortgage.

The prevalence of such a species of security arises, doubtless, on the one hand, from the anxiety of the debtor or borrower to avoid expense, and to prevent the appearance of a mortgage and re-conveyance on the face of his title, at a subsequent period; and on the other, from the supposition of the creditor or lender that by a simple deposit of title deeds, the two parties can, without legal interference or expense, effect a valid charge upon the property, not knowing that the debtor may, if dishonestly inclined, dispose of the property (securely mortgaged as the creditor imagines) the very next day, to an innocent purchaser or mortgagee, who gives valuable consideration, and has no notice of the existing incumbrance. And such purchaser, if the property be desirable, and there are other inducements to the purchase, may be found, and imposed upon by the vendor's specious assertion, that the title deeds have been, unfortunately, lost or destroyed.

To this danger (and it is not trivial), every one who advances money on a bare deposit of title deeds, exposes himself; and much of his security exists in the honesty of the debtor, and the chances against a third party purchasing, or advancing money on, the property, without production and delivery of the title deeds, or without acquiring notice of the prior charge.

The principle that a mere deposit of this nature, whether intended to secure a debt previously due, or an advance made at the time of the transaction, and whether accompanied or not by a written memorandum, expressive of its object, gives to the depositary not merely a lien on the title deeds until the debt is paid, but an actual equitable interest in the land itself, has long been recognised; and although, it being in direct contravention of the Statute of Frauds, the Courts of Equity have from time to time endeavoured to confine its application within as narrow limits as possible, it appears to have acquired considerable latitude, during the latter part of the last, and this century.

In the earlier cases, the principle seems only to have been applied to deposits of title deeds relating to freehold and leasehold property; and it was not until a comparatively late period that a deposit of copies of court roll was held to constitute as valid an equitable mortgage of copyholds, as a deposit of freehold

title deeds, or of a lease, did of property of the natures to which they are respectively applicable.

According to the practice of some manors, however, a deposit of copies of court roll seems to afford a greater degree of security to the creditor, than one of freehold or leasehold title deeds; since the steward, on production of a written memorandum signed by the debtor, will enter on the rolls of the manor, the fact of an equitable mortgage by way of deposit having been made of the property affected.

The consequence of this is, that, should a subsequent intended purchaser or mortgagee, in the absence of the copies of court roll, inspect (as he naturally would), the rolls of the court for information as to the title, he would at once be affected with notice of the equitable mortgage; and the mischief consequent to the creditor, had a subsequent sale or mortgage been effected without notice, would be avoided.

And even if the intended purchaser or mortgagee did not inspect the court rolls, yet the steward, on the instructions for surrender coming before him, would, by referring to the rolls (an invariable practice in the manors alluded to) perceive the prior equitable mortgage, and give notice, both to the intended purchaser or mortgagee, and to the equitable incumbrancer, which would, of course, prevent any injury to the latter.

As before mentioned, a deposit of this nature is equally effectual, whether the intention of the parties be expressed in writing or orally, or even without any expression of intention, the mere delivery of his title deeds by the debtor to the creditor, being *prima facie* evidence of intention on the part of the former to charge the property to which they relate. It need scarcely be pointed out, however, that a written memorandum accompanying the deposit, is highly desirable, as it not only prevents all question as to the purpose of the parties, but it may, and should, contain a clause expressive of an intention to charge the property, not merely with the advance then or theretofore made, but also with all subsequent advances; for in the absence of such a clause, for on the want of evidence to shew that a security for future advances was contemplated, the deposit will be construed as a security only for the debt due or the money advanced at the time of the transaction.

Another point connected with the last, and equally important to be observed, is, that in case the deposit be made to cover future advances by a firm, the memorandum should clearly express an intention that the deposit shall operate as a security for all advances which may thereafter be made by the future members, or members for the time being, of the firm. For silence on this head may cause the transaction to be held as a security for advances made only by the immediate parties to the deposit; and should the firm with whom the deeds are pledged take in another partner, or should one of the partners die, and subsequent advances be made on the faith of the existing security, it is, to say the least, very

questionable whether the deposit would be considered as extending to those future advances. Much litigation has taken place on this point, and the leaning of the Courts seems to be against the extension of the security to such last mentioned advances, in the absence of evidence to the contrary.

In addition to these and other evident advantages of reducing the intention of the parties to writing, may be mentioned the fact that in case the mortgagor becomes bankrupt, and the mortgagee applies in the usual manner, by petition to the Court of Bankruptcy, for a sale of the property, and payment of his debt out of the produce, he is, if the circumstance of the deposit be evidenced by writing under the hand of the mortgagor, entitled to the costs of his application to the Court, but not otherwise. And it seems that any writing, however informal, will satisfy the Court in this instance.

Although, as has been stated, a mere deposit of title deeds (for the purpose) gives to the mortgagee an equitable estate in the land itself, yet it must have been made with that intention; and evidence will be received that the deeds were left with the creditor for some other purpose than that of giving him a security for his debt, or of covering an advance. There are conflicting decisions as to the effect produced by a deposit of title deeds, with a view to their assisting in the preparation of a legal mortgage, some of the judges having held that no equitable interest passes by such a deposit, and others, amongst whom was Lord *Eldon*, having considered such a circumstance as the strongest evidence of an intention to charge the property, and ruled accordingly.

And it appears most probable, that, notwithstanding the avowed disfavour with which these securities are looked upon by the law, the next judgment on the point will decide that a deposit for such a purpose has the same effect as one where no further security is intended to be given.

Lord *Eldon's* reasoning, in the case alluded to (*Ex parte Bruce*, 1 Rose, 374), certainly seems most consistent with the common sense view of the subject, viz., that as the principle of equitable mortgages is, that the deposit of the deeds is evidence of the agreement, a deposit for the express purpose of preparing a legal mortgage is yet stronger evidence of the intention.

In limiting the boundary of these equitable securities, the Courts have held that an agreement to deposit deeds, without an actual deposit, confers no lien (*Ex parte Combe*, 4 Mad. 249). So of a written charge upon lands, if retained by the debtor (*Ex parte Coming*, 9 Ves. 115). And in *Kerrison v. Dorrien*, 9 Bing. 76, an action of trover to recover title deeds, it was decided that a deposit of title deeds by a settlor, subsequently to a voluntary settlement, will not prevail at law against the settlement, the Court pointing out the distinction between a purchaser protected by 30 Eliz. c. 18, and a depositary who has merely a right to go into a Court of Equity for a legal conveyance.

An equitable mortgagee may, through the medium of the Court of Chancery, obtain either an absolute conveyance and foreclosure, or a sale of the property. If the latter alternative be adopted, and the estate should not realize the amount secured upon it, the mortgagee will then be regarded in the light of a general creditor, as respects the balance due to him.

It appears that a deposit by a debtor of his lease, is not a breach of a covenant against assignment, unless expressly prohibited; and a creditor with whom such a deposit is made, is not liable (according to the latest decisions,) to the rent and covenants, unless he enter into possession, or do some other act which may induce a Court of Equity, at the suit of the lessor, to compel him to take a legal assignment, when, of course, he would be liable at law to pay the rent and perform the covenants.

A deposit of title deeds ranks itself under the 4th class of bailments, enumerated by Lord *Holt* in his elaborate judgment in *Coggs v. Bernard*, Lord Raym. 909, viz., "Vadium;" and the depositary is bound only to use ordinary care and diligence in the keeping of the deposit, he still having recourse to the depositor for his debt, though the subject of the deposit, the title deeds, be lost.

E. C.

LEGAL EXAMINATION DISTINCTIONS.

To the Editor of the Legal Observer.

Sir,

As one who looks forward to passing the examination a year or two hence, but who feels almost disheartened at a view of the immense stores of knowledge, throughout all the branches of the law, required by an attorney in the present day, I venture to solicit that the subject heading this letter be not overlooked. Surely there are many who would redouble their efforts in legal study, dry as it often is, were their ardent (and sometimes heedless) spirits cheered and gladdened by a prospect of reaping honour as well as money, by their toil.

In connexion with the annual certificate you have shewn that even respectable young men ought not to be sanguine in their hopes of profit: surely then the reward of a well-earned prize ought to be held out to the view of the industrious. Might not the Incorporated Law Society be induced, for the good of the profession, to arrange with the Examiners for giving some rewards, consisting of medals, certificates of honour, &c., to such as are recommended for their superior proficiency? Sincerely thanking you for your former permission to different correspondents to discuss the question in your columns, I beg to submit this suggestion, with an earnest hope (in which hundreds would unite) that you would advocate at least a trial.

Let it be now promised that next October, or next October twelve months, the Law Society

would place various rewards, say half a dozen, of different degrees in point of honour, at the disposal and for the bestowment of the Examiners, and I am convinced such examinations would turn out to be the best ever had in point of satisfaction. "I, for one, would try to be 'one of the six.' " SUB ARTICULIS.

THE FIRST DAY OF TERM.

"ON the first day of Michaelmas Term, 1841," to speak after the manner of Sir Robert Baker, "might be seen a sight worthy to behold. There might be seen in procession to Westminster Hall, the right honourable and right renowned Lord Lyndhurst, three times Lord Chancellor of England, of which there is no remembrance that any man was before him; near to him all the Common Law Judges, the Master of the Rolls, the Vice Chancellor of England, and furthermore, Vice Chancellor

Knight Bruce, and Vice Chancellor Wigram, a thing never before seen. Well might the suitor rejoice on that day, that Equity hath now five ears wherewith to hear all manner of complaints. As they proceeded, it was observed that the sun, which had for many weeks been obscured by a continual mist and rain, shone forth with a brightness which cheered the hearts of many who had for years given themselves over to despair."

Court of Queen's Bench.

2d Nov. 1841.

The Court will, during the first four days of the Term, take *New Trials Nisi* and *Motions*, and on any of those days, when they fail, will proceed with the *New Trial Paper*.

The *Crown* and *Special Paper* on the usual days, and every other day throughout the Term, *Motions* first, and then the *New Trial Paper*.

ATTORNEYS TO BE ADMITTED the last day of Michaelmas Term.

QUEEN'S BENCH.

Pursuant to Judge's Order and Rule of Court.

Clerks' Name and Residence.

Dalton, George Wilkinson, Brown Candover, Hants; and Duke Street, Saint James's.

Edwards, Thomas Gold, Denbigh.

To whom articulated, assigned, &c.

Octavius Robert Wilkinson, St. Neots; assigned to Samuel White Sweet, Basinghall Street.

Edward Hugh Edwards, Bedford Row; assigned to Thomas Evans, Denbigh.

APPLICATIONS FOR RE-ADMISSION the last day of Michaelmas Term, 1841.

QUEEN'S BENCH.

Balmont, William, Southmolton.
Bright, William Oliver, Brussels.
Batley, Henry, Highgate.
Bowditch, James, Bell's Buildings, Fleet St.
Crookall, John, Manchester.
Cocker, George Henry, 11, Lloyd Square.
Fothergill, Francis Frankland, 18, Cambridge Street.
Fairbanks, William, Frome Selwood.
Gates, William Caster, 38, New Compton St.; 2, Hoxton Sq.
Gabriel, William Wallace, 5, Upper Porchester Street.
Hodgson, Joseph, Gisburn.
Haynes, Thomas William, 43, Arlington St.; and 15, Mornington Place.

Harding, Samuel Tuffley, Manchester.
Hiley, William, Parkstone.
Johnson, John F., 36, Roupell St.; Billericay; Downe's Buildings.
Maskell, John, 9, Gastigny Place, City Road; Aston Place; Steyman's Row; George's Row; Lizard Street; and Whitecross Street Prison
Roberts, Gregory, 16, Martha Street, Shore-ditch.
Ridout, Charles Vie, 31, Upper Charlotte St., Regent Street.
Redward, Charles Benjamin, Portsea.
Tanner, Wm. Budd, Shopdon and Leominster.
Wallace, George King, 5, Paradise Row, Chelsea.

Ordered by the Judges to be added to the List.

Bradshaw George, Blackburn.
Harding, John, Sharington-cum-Gresley.
Moore, Frederick Harry, Blandford Forum.
Smallwood, Thomas, the younger, Wellington.

Hutchinson, Julius, Debtors' Prison for London and Middlesex; 3, Garden Place, Lincoln's Inn Fields; Herne Bay; and Featherstone Buildings.

The List of Admissions for Hilary Term, will be given in an early Number.]

NOTES OF THE WEEK.

THE NEW VICE CHANCELLOR'S COURT ROOMS AT WESTMINSTER.

OUR readers are no doubt generally aware that Vice Chancellor *Knight Bruce* sits in No. 2 of the Committee Rooms of the House of Commons, and Vice Chancellor *Wigram* in No. 1. It is well to record the fact, as part of the history of the ill-construction and inconvenience of the Courts at Westminster. We presume that the new Courts in the Old Square of Lincoln's Inn, will be ready by the ensuing vacation. These unsightly out-houses, which darken and disfigure the Old Hall of Lincoln's Inn, can of course only be temporary.

NEW QUEEN'S COUNSEL.

Alexander James E. Cockburn, Esq., of the Middle Temple, Recorder of Southampton, of the Western Circuit, who was called to the Bar 6th Feb. 1829.

EXAMINATION OF ARTICLED CLERKS.

The Examiners have appointed Wednesday, the 17th instant, to take the examination, at the Hall of the Incorporated Law Society, at half-past nine o'clock. The preliminary papers must be left at the Society's Office on Tuesday, the 9th.

CHANCERY COURTS SELECTED BY QUEEN'S COUNSEL.

Sir Charles Wetherell	-	All the Courts.
Mr. Twiss	-	All the Courts.
Mr. Tinney	-	L. C. and Rolls.
Mr. Pemberton	-	Master of the Rolls.
Mr. Boteler	-	Bruce & Wigram, V. C.
Mr. Simpkinson	-	Bruce, V. C.
Mr. Swanston	-	L. C. & Bruce, V. C.
Mr. Wakefield	-	Shadwell, V. C.
Mr. Burge	-	Wigram, V. C.
Mr. Skirrow	-	Wigram, V. C.
Mr. Temple	-	Wigram, V. C.
Mr. Miller	-	All the Courts.
Mr. Spence	-	L. C. & Bruce, V. C.
Mr. Kindersley	-	Master of the Rolls.
Mr. Whitmarsh	-	All the Courts.
Mr. Cooper	-	Bruce, V. C.
Mr. Girdlestone	-	L. C. & Shadwell, V. C.
Mr. Richards	-	L. C. & Shadwell, V. C.
Mr. Stuart	-	L. C. & Shadwell, V. C.
Mr. Bethell	-	Shadwell, V. C.
Mr. Turner	-	Lord Chancellor & Rolls.
Mr. Sharpe	-	Wigram, V. C.

Arranging the names according to the rank of the Judge of each Court, they are as follows:—

Before The Lord Chancellor.

Sir C. Wetherell	Mr. Whitmarsh
Mr. Twiss	Mr. Girdlestone
Mr. Tinney	Mr. Richards
Mr. Swanston	Mr. Stuart
Mr. Miller	Mr. Turner
Mr. Spence	

Before The Master of the Rolls.

Sir C. Wetherell	Mr. Miller
Mr. Twiss	Mr. Kindersley
Mr. Tinney	Mr. Whitmarsh
Mr. Pemberton	Mr. Turner

Before the Vice Chancellor of England.

Sir C. Wetherell	Mr. Girdlestone
Mr. Twiss	Mr. Richards
Mr. Wakefield	Mr. Stuart
Mr. Miller	Mr. Bethell
Mr. Whitmarsh	

Before Vice Chancellor Knight Bruce.

Sir C. Wetherell	Mr. Miller
Mr. Twiss	Mr. Spence
Mr. Boteler	Mr. Whitmarsh
Mr. Simpkinson	Mr. Cooper
Mr. Swanston	

Before Vice Chancellor Wigram.

Sir C. Wetherell	Mr. Temple
Mr. Twiss	Mr. Miller
Mr. Boteler	Mr. Whitmarsh
Mr. Burge	Mr. Sharpe
Mr. Skirrow	

SUPERIOR COURTS.

Queen's Bench.

[Before the four Judges.]

PRACTICE.—ARREST.

Where there has been an arrest in one Court upon a capias issued under the authority of the 18th section of 1 & 2 Vict. c. 110, and where there have been detainers on writs issued by other courts, the defendant must, if he thinks such arrest illegal, apply in the first instance to the Court out of which the writ whereby he was arrested issued. This Court will not, in a proceeding on one of the detainers, entertain the question of the legality of the first writ.

Mr. Pearson moved for a rule to shew cause why the defendant in this action should not be discharged out of the custody of the marshal. He founded his motion on an affidavit which stated that on the 2d of September the defendant was arrested on a *capias* issuing out of the Court of Common Pleas, which writ was founded on a decree or order of the Court of Chancery, made for the payment by the defendant of certain costs therein declared to be due from him. When the defendant was arrested on this *capias*, which purported to be issued under the authority of the 1 & 2 Vict., c. 110, s. 18, it was found that there were other writs on which he might be detained, and he was accordingly detained upon them. One of them was a writ from this Court issued in this action. The arrest had been illegal, and therefore the detainer under the writ in this case could not be supported. The statute of 1 & 2 Vict. c. 110, s. 18, did not apply to a case of this sort. He was stopped by the Court.

Lord Denman, C. J.—We are all of opinion that before we are called on to set aside the detainer on our own writ, the Court of Common Pleas should be asked to determine whether the writ issued out of that Court can be supported. The original arrest was on a writ from that Court, and we cannot determine the validity of that writ in the first instance. You must apply to the Court of Common Pleas.

Per Cur.—Rule refused.—*Wright v. Standford*, M. T. 1841. Q. B. F. J.

PROHIBITION. — ECCLESIASTICAL COURT. — SIMONY.

A proceeding against an ecclesiastical person tending to deprivation, must be taken according to the mode prescribed by the 3 & 4 Vict. c. 86.

Where, therefore, the Archbishop of York, on his visitation by his commissary, received in answer to some of his visitatorial articles, a letter from one of his clergy, charging the Dean of York with simony, and proceeded as under the visitation, and in that character alone, to a sentence of deprivation, this Court granted a prohibition.

The prohibition in such case, lies after sentence where the Commissary's Court has merely adjourned.

Quære, whether it would lie if the commissary had dissolved his Court.

In this case a rule had been obtained, calling on the defendants to shew cause why a writ of prohibition should not issue, commanding them to abstain from taking further proceeding in the matter of a sentence of deprivation pronounced by the Archbishop against Dr. Cockburn, the Dean of York. The facts of the case were shortly these. Certain differences had existed among the members of the capitular body of York, respecting the property of the trustees of the chapter fund. There was an order made by the dean and chapter to pay a sum of money to the dean. One of the canons residentiary, Mr. Harcourt Vernon, a member of the capitular body, stated that he should appeal against that order. He did appeal, and there was a citation for a visitation to take place on the 18th of January. There had not been an instance known of an archiepiscopal visitation in York since 1715. A citation for a visitation was issued on this occasion. At this visitation Dr. Phillimore appeared as the commissary or commissioner from the archbishop, under authority of a commission, which stated that the archbishop had duly and lawfully appointed a visitation to be held on the 10th of January, between the hours of eleven and two, and which went on thus, "and whereas we were about to commence the said visitation in person, but may after find ourselves prevented by certain other business, &c.," therefore Dr. Phillimore was appointed commissary. It was under the authority thus conferred, that Dr. Phillimore acted as commissary. On the 18th of January, certain articles were exhibited by the archbishop, and they had relation to various matters connected with the chapter and the cathedral. The 19th of these articles or interrogatories was in these terms: "Are the chancels of churches and chapels belonging to your body in good and sufficient repair?" that interrogatory had led to the circumstances which had since taken place in the cathedral. On the 18th of January, the articles were administered. No answers were at that time given, but as there were certain disputes respecting the property of the chapter, it was thought better that they should be referred to arbitration. This proposition was assented to by all the parties interested in the dispute, and

an agreement was made to subject these disputes to the decision of an arbitrator. The meeting at which this agreement was made, did not take place till the 21st of February. In the mean time certain answers to the interrogatories were put in by some of the members of the capitular body, and one gentleman, the Reverend Mr. Dixon, amongst other answers, returned one to the 19th article in the following form: "that the churches of the dean and chapter which are in many counties, are repaired; the chancels are usually let, and are left by the provisions of the leases to the lessees, and the presentment sold, but whether the proceeds are applied to repairs does not appear." This answer was understood to mean to charge the dean with having simoniacally sold the presentations of the chapter. There was a second meeting of this visitation appointed, and in the mean time a letter written to the dean, and this letter was the only citation, or summons of any kind which he appeared to have received, and on which proceedings were subsequently founded, that terminated in a sentence against him, depriving him of his deanery and of all ecclesiastical preferments in the archbishopric. The letter referred to was as follows: "Dear Sir, it was only by yesterday's post that I received Mr. Dixon's answer. The answer to the nineteenth article involves a charge against you, which has not before been brought to my notice, and which is of so serious a nature, that I enclose a copy of it for your perusal, in order that you may properly reply thereto, on Thursday next." This letter was signed by Dr. Phillimore. The 21st of February was the date of the letter, and the meeting was to be held by adjournment on the 24th of that month. In answer to this letter, the dean wrote another saying, that he was then at three hundred miles distant, and that he could not attend at the time specified at that period of the year. The meeting was then again adjourned to the 23d of March, when Dr. Phillimore stated that it was his intention to try the dean on the charge of simony, as contained in the answer of Mr. Dixon. A regular monition was served on the dean to appear on that day, and answer the charge. Neither at that time, nor at any other time were there any articles exhibited to the dean. The dean stated that he protested against the jurisdiction of the commissary in respect of the churches, and this occasioned a considerable altercation between the dean and Dr. Phillimore, who at first refused to accept the protest, insisting that the dean should plead to the charge, but this the dean refused to do. Dr. Phillimore, in consequence of this protest, pronounced the dean in contempt. This was on the 23d of March. On the 1st of April, he held another sitting as commissary, and then pronounced the following order. "Joseph Phillimore, Doctor of Laws, Regius Professor of Civil Law in the University of Oxford, and Advocate of the Court of Arches; Commissary for the purpose of holding a visitation of the Most Reverend Father in God, Edward, by Divine Providence Lord Archbishop of York, Primate of England and Metro-

politan: Whereas you, the Very Reverend William Cockburn, Doctor in Divinity, Dean of the Cathedral and Metropolitan Church of Saint Peter, of York, on the 23d day of March last, pending the proceedings of the said visitation have been pronounced contumacious and in contempt, and have continued ever since wilfully to absent yourself from the same. We, therefore, in virtue of the authority conferred upon us by the said Lord Archbishop, the visitor as commissary, do by these presents peremptorily monish you, the said Very Reverend William Cockburn, to appear before us in the said cathedral and metropolitan church in the place wherein the said visitation was this day holden, at the hour of half-past eleven in the forenoon of to-morrow, then and there to purge yourself from the said contempt, and to return to the lawful obedience of the Ordinary, on pain of canonical punishment. Given under the seal of the said Lord Archbishop, the first day of April, in the year of our Lord, one thousand eight hundred and forty-one."

As the dean did not appear on the following day, the commissary proceeded in his absence to examine on oath, and *viva voce*, certain witnesses, and then made his report to the archbishop, who on the authority of that report, declared that the dean was convicted of simony. The conviction was alleged to proceed on the charge of simony, preferred against the dean by the Reverend Mr. Dixon. The declaration went on to allege that the dean had at first appeared before the commissary, but had afterwards been pronounced contumacious and in contempt, for having wilfully interrupted the progress of the proceedings, and declared that he would not submit to the authority of the Court. The conviction declared the dean deprived of his deanery and of all Ecclesiastical preferment within the Archbishopric of York. After these proceedings had been taken the Court adjourned.

The Attorney General, the Solicitor General, Mr. Dundas, Dr. Phillimore, and Mr. Bayley, shewed cause against the rule.—"This application must be supported, if at all, on the ground either of a total want of jurisdiction, or on an excess in the exercise of it. Neither one nor the other can be said to be the case here. Besides, after sentence, either of these objections to be available, must appear on the face of the proceedings. They do not appear here. The objection made is, that the powers given to the commissary were limited and restrained, and would not authorize him to entertain a charge of simony. Three grounds have been stated for this application, first, that by the law and constitution of England an ordinary has no jurisdiction on a visitation to take cognizance of a charge of simony, and to proceed to deprivation on such a charge; secondly, that by the peculiar constitution of the church of York, the dean of that church is not subject to the visitation of the archbishop; thirdly, that if these proceedings had been lawful before the 3 & 4 Vict. c. 86, the jurisdiction has been by that statute abolished. As to the first of these points it is clear from all the authorities that the jurisdiction now exercised does lawfully

exist in the commissary of the bishop. In Godolphin's Ecclesiastical Law,^a it is stated that any spiritual person is visitable by the ordinary, as is the dean. The ancient custom was for the visitor to visit in his own person. In Blackstone^b it is said that "the law has provided proper persons to enquire into and correct the irregularities of corporations. With regard to all ecclesiastical corporations, the ordinary is their visitor, so constituted by the canon law, and thence derived to us. The pope formerly, and now the king, as supreme ordinary, is the visitor of the archbishop, or metropolitan; and the bishops, in their several dioceses, are in ecclesiastical matters the visitors of all deans, &c." Comyn's Digest,^c shews that he may suspend or deprive for contumacy. The cases of *Baker v. Rogers*,^d and *Smith v. Shelbourn*,^e support the doctrine that the ordinary or the commissioners may deprive for simony. *Walrond v. Pollard*,^f is a strong authority, for it is the case of a dean being tried on a visitation, and it was moved and agreed that the dean was visitable of the bishop of mere right. The case of the *Bishop of St David's*,^g is to the same effect. Lord Coke affirms the doctrine,^h and it was adopted by Lord Holt in *Phillips v. Bury*,ⁱ and his judgment was confirmed in parliament.^k Against this decision of the visitor there is not in any case any remedy but by way of appeal. At all events prohibition does not lie, for the proceedings are at an end, and there is no one to whom to address the writ. If the dean comes into a Common Law Court at all, he ought now that the deanery is vacant, to apply for a *mandamus* to restore him to his office. A prohibition after final judgment cannot be maintained. [Mr. Justice Coleridge.—Can a bishop in an ordinary visitation take a charge on which there may be a deprivation?] There is no substantive distinction between the visitations. The object in all is to enquire, to punish, and to reform. [Mr. Justice Coleridge.—I always understood that there was, before the late act, a great difficulty in bringing clergymen who had acted in this manner to justice by such means, but no such difficulty would exist if your present argument is right.] It is clear that the bishop may censure and suspend; if so, for what time is he to suspend? From Nicholl's Catalogue of Processes in the Registry of the Court of Delegates, it seems that the offences of the clergy must be cognizable at the triennial visitation. But the triennial visitation does not preclude a visitation of this sort, which the necessities of the case may require; and if the party accused will not submit himself to enquiry by his superior, he becomes guilty of contempt, and may have sentence pronounced against him on that ground. A mere defect in the manner of visitation will

^a Edit. 1687, p. 34.

^b 1 Comm. 480.

^c Tit. Visitor, A. 6; and *id. ib.* C.

^d Cro. Eliz. 788.

^e *Id.* 685.

^f 3 Dyer, 272 b.

^g 1 Lord Raym. 447, 539 (this is the fullest report); 1 Salk. 134.

^h 4 Inst. 337.

ⁱ Lord Raym. 5.

^k Show. Parl. Cases, 35

not affect the whole proceeding, so as to make it void. *Bishop of Kildare v. The Archbishop of Dublin*.¹ In the *Juris Canonici Anglicani*,^m it is said that in all visitations whatever, the visitor may summon and enquire, though he may not punish, but that the bishop and archbishop, having a general jurisdiction, may enquire and punish. Then as to this particular visitation. It is said on the other side that here there is no cause in Court, and that the visitatorial power of the bishop must be exercised if at all, in a suit in Court. That argument is not well founded. In Ayliff's History of the University of Oxford,ⁿ the general and extensive powers of an episcopal visitor are fully stated: it is shewn that he may exercise them without a suit in Court, and that in this respect there is no distinction between an eleemosynary and an ecclesiastical corporation. Now in the former of these there can be no doubt whatever that a visitor may punish and reform without a suit. And Lord Coke^o describes the power of the visitor and ordinary in very general and comprehensive terms. [Mr. Justice Coleridge.—Can you bring this case within the right of depriving on visitation by personal presence, without a proceeding in Court, for if you cannot, then they will say on the other side, that there having been no proceeding in Court, the commissary's authority is at end, by virtue of the statute.] The statute was never meant to apply to cases like the present, but only to the ordinary cases of proceedings in the ecclesiastical courts, on matters the subject of suits there. That statute, by the 23d sect., expressly saves the visitatorial power of the bishop. But then it is said that by the peculiar constitution of the cathedral church of York, such a visitation as this cannot be held; and the bull of Pope Celestine is relied on in support of that argument. But after that bull had been promulgated, the statute 28 Hen. 8, c. 62, was passed, and by that statute all bulls of the pope of Rome are declared void, and of no effect in this country. Then the deed called the composition of William de Melton, executed in 1328, is referred to for the purpose of shewing that in this cathedral there is a special exemption of the dean from the visitatorial powers of the bishop. It appears that there had been disputes between the dean and the archbishop relating to their respective rights, and that a composition was executed excepting from the ordinary exercise of the visitatorial power of the archbishop all cases which might lead to deprivation. All other cases were kept under the immediate personal jurisdiction of the archbishop himself; and all that tended to deprivation was to be decided by the dean and chapter themselves. But taking it in its strongest sense, it never could be meant that the dean was never to be subjected to any enquiry. However, it is to be recollected that that composition was never acted on, and in the first year of the reign of Edw. 6, there was a new composition between

the dean and chapter and the archbishop, and according to that they conceded that in all time to come the archbishop should enquire into all matters of ecclesiastical discipline. This is a case of ecclesiastical discipline. The visitation of Archbishop Freven occurred in 1662, and the arrangement in William de Melton's composition was not then adverted to, and two persons were then deprived by the commissary. There was another visitation by Archbishop Sterne in 1667; the chapter then claimed the benefit of the composition of De Melton, but the archbishop refused to admit the claim, and the chapter submitted. There was another visitation in 1765, by Sir W. Dawe, who was then archbishop of York, and the composition was again set up, and the claim of the chapter under it again rejected. So that it is clear that in all these cases the composition was treated as of no authority whatever. The commissary has therefore, in this case, properly exercised the power conferred on him by the archbishop; the proceeding is at an end, and on no ground whatever can this application for a prohibition be supported.

In re The Archbishop of York and Dr. Phillimore, T. T. 1841. Q. B. F. J.

[To be continued.]

Queen's Bench Practice Court.

ARTICLED CLERK.—ENTRY IN MASTER'S BOOK.

The Court permitted an articulated clerk to make his required entry in the master's book on the first day of term, it not having been entered in due time by one day, in consequence of a mistake of the clerk of the London agent

Montague Smith moved for leave that an articulated clerk might be allowed to make his entry required by the rule of Court in the Master's book, it not having, by mistake, been introduced there until Monday, the 1st November, instead of the previous Saturday. The cause of the error was the inattention of the clerk to the town agent of the attorney with whom the clerk had served his articles. The result was, that the strict terms of the rule had not been complied with. As the application was made on the first day of the term, which was prompt, it was hoped that the application would be granted.

Patterson, J., acceded to the application.

Ex parte Griffin, M. T. 1841. Q. B. P. C.

ATTORNEY.—ARREST.—PRIVILEGE.—ABSCONDING.—1 & 2 VICT. c. 110, s. 3.

An attorney who is about to quit England, is liable to be arrested pursuant to 1 & 2 Vic. c. 110, s. 3, notwithstanding his privilege.

An attorney, named Moore, had become indebted to the plaintiff in this action, and it being supposed that he was about to leave the country, an application was made for an order to arrest, pursuant to 1 & 2 Vict. c. 110, s. 3. The usual affidavit having been made, shewing that he was about to quit England, an order for his arrest was made by Mr. Justice Wightman, and that writs of *capias* should issue into

¹ 2 Brow. Parl. Cases, 179.

^m Chap. Visitors.

ⁿ Vol. 2, p. 84.

^o Co. Litt, 96 a.

different countries, in which it was supposed the defendant was likely to be found: and the defendant was accordingly arrested.

A. Wood, now applied on behalf of the attorney, for a rule to shew cause why the order should not be rescinded, and the writ of *capias* set aside, on the ground of the privilege of the defendant, as an attorney, to be free from arrest.

Patteson, J., thought that the defendant, as an attorney, was only privileged from arrest in order that he might attend in court; and not that he might run away from the country. If it was shewn that he was about to quit England, the fact of his being an attorney, did not prevent his arrest pursuant to the statute.

Rule refused.—*Thompson v. Moore*, M. T. 1841. Q. B. P. C.

CAUSE LISTS, MICHAELMAS TERM, 1841.—Lord Chancellor.—Vice Chancellors.

Judgments.

Trelawny v. Roberts, V. C. *exons.*
fur. dirs. and costs

Pleas and Demurrers.

V. C. S. Medley v. Horton, *demurrer*

V. C. B. Haigh v. Dixon, *ditto*
V. C. W. Trotter v. Durham Railway Company, *ditto*

Re-hearings and Appeals.

Brierley v. Boucher, *appeal*
Blundell v. Gladstone—*Ditto v. Stoner*—*Ditto v. Blundell*, *ditto*

Addis v. Campbell, *ditto*
Peppercorn v. Peacock, *ditto*
Attorney General v. Wimborne School, 2 *appeals*.
Woock v. Renneck—*Ditto v. Blessett*—*Ditto v. Sampson*, *appeal*

Kay v. Holder, *ditto*
Rowlett v. Rowlett—*Ditto v. Mosley*, *ditto*
Evetts v. Hall, *ditto*
Vaughan v. Buck, *ditto*
Knight v. Frampton, *ditto*

Michaelmas Term, 1841.

uesday, 2d November—Motions
Wednesday, 3d November^e

Causes, Further Directions, and Exceptions.

Before The VICE CHANCELLOR OF ENGLAND.

Butcher v. Jackson—*Jackson v. Butcher*

Jones v. Jones, *fur. dirs. & costs.*
Fletcher v. Northcote, *exons.* 2 *sets*

Melland v. Gray, *exons.*
Lukes v. Frost, *fur. dirs. & costs*

Barnaby v. Filby
Runceman v. Stillwell, *fur. dirs. and costs*

Smith v. Pugh
Gwynne v. Lloyd, *fur. dirs.*

Hughes v. Rogers, *fur. dirs. & cs.*
Jumpson v. Pitchers—*Dawes v. Jumpson*

Costa v. Albertazzi
Dangerfield v. Evans

Prentice v. Phillips
Aft. Tm.—*Ward v. Alsager*

Aft. Tm.—*Ward v. Ward*
Browne v. Browne, *fur. dirs. and petition*

Jones v. Curlewis
Tulloch v. Hartley, 2 *causes*, at *defendant's request*

Naylor v. Lackington

Attorney Gen. v. Haberdasher's Company
Franklin v. Drake
Northwood v. Scrase, *fur. dirs. & costs*

London and Greenwich Railway Company v. Goodchild, *exons.*

Potts v. Pinnegar
Poole v. Allen

Trulock v. Robey
Jolliffe v. Hector, 2 *causes*, *exons.*

fur. dirs.
Attorney Gen. v. Slaughter

Kebell v. Philpott, *fur. dirs. & costs*

Eschequer Causes.

Before V. C. BRUCE.

Wilcox v. Glaze, *fur. dirs. & costs*
Seddon v. Prince, *exons.*

Rogers v. Maule, *fur. dirs. and petition*

Christison v. Mayor, &c. of Berwick, *exons.* 2 *sets*

Craik v. Lamb
Mayor of London v. Combe

Chambers v. Middleton
Searle v. Colt

Pelham v. Hilder—*Thursby v. Ditto*

Plumbe v. Plumbe

Court of Chancery Causes.

Before V. C. BRUCE.

Warner v. Gomme
Horne v. White

Bartlett v. Coleman
Hopkinson v. Bagster, *exons.*

Robinson v. Rosher
Henslowe v. Lambert—*Henslowe v. Henslowe*

Broadhurst v. Balguy
Thornton v. Hinge, *fur. dirs. and costs*

Alder v. Curry
Dryden v. Welford

Cresswell v. Balfour
Higgins v. Higgins

Connop v. Hayward
Morgan v. Nasmith, *fur. dirs. & petition*

Moore v. Moore, *fur. dirs. and costs*

Blundell v. Gladstone, *exons.*
Attorney Gen. v. Brandreth

King v. Hemming, 2 *causes*
Jarman alias Jerman v. Jones

Furnival v. Foulkes

Eschequer Causes.

Before V. C. WIGRAM.

Hughes v. Hughes
Salkeld v. Phillips

Sutherland v. Briggs

Bristed v. Payn
Mousey v. Burenham

Roberts v. Williams
Jessop v. Jessop

Raine v. Cairnes
Lewis v. Adams

Claydon v. Meadows
Wyndham, now Earl of Egremont v. Young

Bruin v. Knott
Jackson v. Misfield

Hart v. Hart
Neesom v. Clarkson

Bowser v. Colby
Tomlin v. Tomlin

Franklin v. Nicholl
Davies v. Powell

Bannister v. Davies
M'Intosh v. Watson

Craddock v. Greenway
Lydall v. Dodd—*Dodd v. Lydall*

Jones v. Smith
Preston v. Kendall

Pett v. Goodford
Buckworth v. Dashwood

Owen v. Williams
Lloyd v. Wait

Bennett v. Pearce

Before V. C. SHADWELL.

Rand v. M'Mahon
Carr (pauper) v. Barker

Dyball v. Bell
Winkworth v. Marriott

Irving v. Elliott
Wilkinson v. Popplewell, *fur. dirs.*

& costs
Richardson v. Pierson, *ditto*

Bingham v. Hallam, *ditto*
Avarne v. Brown, *exceptions*

Cormouls v. Mole
Gedge v. Thorn, *fur. dirs. & costs*

Phillips v. Hayward
Jeffreys v. Hughes, *fur. dirs. & costs*

Attorney Gen. v. Hill
Hare v. Cartridge, *fur. dirs. & costs*

King v. Croome
Attorney Gen. v. Pratt, at *request of defendant*

Hall v. Deacon, *fur. dirs. & costs*
Harris v. Lapworth, *fur. dirs. & costs*

Saxby v. Saxby, *fur. dirs. & petn.*
Moses v. James

Doo v. London and Croydon Railway Company

Witherden v. Witherden
Godden v. Crowhurst

Atkins v. Hatton, *fur. dirs. & costs*

N.B. For the abated causes, and stand over generally, refer to Trinity Term, 1841.

Brydges v. Branfill
Barlow v. Lord, *fur. dirs. & costs*
Lee v. Jones, *fur. dirs. & costs*
Barrodale v. March
Gething v. Vigurs

Before V. C. BRUCE.

Lyse v. Kingdon
Abraham v. Holderness
Smith v. Stovin
Matchitt v. Palmer
Sutton v. Maw
Nedby v. Nedby
Milbank v. Stevens
Griffiths v. Griffiths
Smith v. Wilcoxon—Ditto v
Thompson—Smith v. Smith,
by order
Walker v. Thomason
Miller v. Gow
Cort v. Winder
Clark v. Wilmot
Stubbs v. Lister
Burridge v. Rowe
Simon v. Topham
Davies v. Davies
Whibley v. Hebb
Osborne v. Harvey
Helsham v. Langley
Lodge v. Nicholson
Nash v. Elsley
Townshend v. Fielden—Lloyd v.
Ditto
Nicklin v. Dunning
Boulter v. Boulter
Bastin v. Bastia
Clayton v. Lord Nugent
Ward v. Price
Ryan v. Daniel
Veitch v. Irving

Before V. C. WIGRAM.

Taylor v. Clark
Douglas v. Kierman
Swindell v. Wright, *fur. dirs. & costs*
Swindell v. Swindell, *ditto*
Duncombe v. Davies, *exceptions*
Stone v. Matthews, *exceptions & ditto*
Tylee v. Stace, *exceptions*
Duncombe v. Davis, *ditto*
Penfold v. Giles, *ditto*
Ewing v. Trecothick, *ditto*
Sharp v. Manson
De St. Cyr v. Commissioners of
Bequests in Ireland
Walker v. Jefferys
Moore v. Moore
Frith v. Frith
Meux v. Bell, *fur. dirs. & costs*
Tyrer v. Moor
Cocks v. Edwards—Griffith v.
Richards—Hawley v. Powell
Whittaker v. Wright
Barton v. Curlewis
East India Company v. Coopers'
Company
Slagg v. Owen
Fewster v. Turner
Holt v. Horner
Hadfield v. Cullingworth
Thomas v. May
Blakeley v. Whieldon
Harrison v. Child

Browne v. Smith—Browne v.
Lockhart
Hodges v. Daly

Penney v. Todd
St. John's College, Oxford, v.
Carter
Dowly v. Wenfield
Playfair v. Birmingham & Bristol
and Thames Junction Railway
Company
Chialett v. East
Gell v. Smith
Lindsey v. Godmond
Rock v. Silvester
Thwaites v. Robinson
Duncan v. Campbell
Lovell v. Tomes
Curtis v. Mason
Allen v. Chaffers
Page v. Hilton
Rundell v. Lord Rivers, *exons.*
Rolfe v. Wilson
Bowes v. Fernie—Bowes v. Gibbs
Lewis v. Lewis
Savill v. Savill
Morgan v. Hayward
Ward v. Pomfret, *fur. dirs. & costs*
Hunsley v. Holder, *at defendant's request*
Webb v. Clarke
Smith v. Mackie
Attorney Gen. v. Field
Booth v. Lightfoot
Willett v. Blandford
Lloyd v. Jones, *fur. dirs. & costs*
Barker v. Barker, *fur. dirs. & costs*
Cole v. Hall

*Causes set down for hearing in
Michaelmas Term, 1840.*

Carew v. Macnamara
Salisbury v. Morrice—Morrice
v. Salisbury
Thornycroft v. Crockett
Hoare v. Hornby
Johnson v. Cameron
Seawin v. Seawin
Alexander v. Clarke
Jellicoe v. Price
Brocklebank v. Northgreaves
Breeze v. English
Hunt v. Thackrah
Bevir v. Rice
Coningham v. Earl Beauchamp—
Ditto v. Cattermole
Smith v. Spencer
Henfrey v. Hermon
Perkins v. Bradley
Wood v. Lewis
Goode v. Morgan
Matthews v. Matthews
Clamp v. Clarke
Ridley v. Lashmar
Ireland v. Cox
Prendergast v. Turton
Monk v. Earl Tankerville
Allright v. Giles
St. John v. Macnamara
Ibbetson v. Selwin
Ibbetson v. Fenton
Howell v. Tyler } *at def't's req.*
Ditto v. Ditto
Ellis v. Ellis
Green v. Green

Lee v. Burton
Lloyd v. Mason, *fur. dirs. & costs*
Heaslop v. Bank of England, *ditto*
Milne v. Bartlett, *ditto*
Richards v. Wood, *exons. & ditto*
Morrell v. Owen, *fur. dirs. & costs*
Fredricks v. Wilkins, *fur. dirs. & costs*
Culley v. Culley
Hayward v. Hayward
Liddell v. Granger, 2 causes, *exceptions*
Roach v. Peters, *fur. dirs. & costs*
Bayden v. Watson, *exons. & do.*
Moody (pauper) v. Hebbard
Gray v. Mumbray
Williams v. Roberts
Coulton v. Middleton, *further directions and equity reserved*
Coore v. Lowndes
Smith v. Farr
Gibbs v. Gregory
Bonnor v. Hatch
Williams v. Moore
Vanderplank v. King
Gardner v. Blane
Buxton v. Simpson
Hodgkinson v. Hodgkinson
L. C.—Heap v. Haworth, *exceptions*—Ditto v. Ditto, *further directions and costs*
Doubeny v. Coghlan, *exons. & do.*
Davis v. La Combermere, *exons.*
Horlock v. Smith, *ditto*
*Causes set down for hearing in
Hilary Term, 1841.*
Greene v. Warne
Appleby v. Duke
Clifford v. Turrell
Cort v. Winder
Jones v. Lewis
Evans v. Bower
Harman v. Grainge
Bundy v. Frankum
Holland v. Clark
Fulcher v. Fulcher, 4 causes
Oswald v. Landles
Baylie v. Martin
Bourne v. Walker
Beckett v. Overton
Edwards v. Hillier
Attorney General v. Elcox
Hutchings v. Batson
Wale v. Moores
Sloper v. Sloper
Tanner v. Long
Mattalieu v. Miller
Kelly v. Hooper
Claridge v. Dineley
Buckett v. Church
Stephens v. Williams
Galbreath v. Ward
White v. Rigge
Young v. Waterpark
Hickling v. Boyer
Wentworth v. Tubb
Ireland v. Cox
Wright v. Marston
Payne v. Bristol and Exeter
Railway Company
Simmonds v. Richardson
Higgs v. Goldie
Bristow v. Woods, *fur. dirs. & co.*
Dartmouth Corporation v. Holdsworth

Lade v. Trill
 Watkins v. Briggs
 Schultes v. Ward
 Simmonds v. Richardson
 Lythgoe v. Martin
 Hobby v. Barrar
 Samuel v. Gibbs
 Rawson v. Samuel
 Midgley v. Midgley
 Coppin v. Gray
 King v. Chuck
 Boughton v. James
 Weston v. Peache
 Kyan v. Dunn
 Forsyth v. Chard, *fur. dirs. & cs.*
 Knapp v. Harpur
 Fry v. Wood
 Fanning v. Devereux
 Chafey v. Serjeant
 Dobree v. Schroder, *exceptions*
 Keen v. Birch, *fur. dirs. and costs*
 Vickers v. Hardwick
 Medley v. Eaton
 Hall v. Rawdon
*Causes set down for hearing in
 Easter Term, 1841.*
 Scarborough v. Sherman
 Davis v. Chanter—Ditto v. Bi-
 shop
 Forbes v. Peacock
 Capel v. Hughes
 Allen v. Cornfield
 Osbaldiston v. Simpson
 Fitzpatrick v. Newton
 Cogger v. Wickes
 King v. Green
 Lyddon v. Woolcock
 Egginton v. Burton
 Stocken v. Chuck
 Pullen v. Haverfield
 Cash v. Belsher
 Williams v. Ellis
 Ranger v. Great Western Rail-
 way
 Wright v. Rutter
 Aspinall v. Andus
 Morgan v. Elstob
 Harrison v. Lane
 Body v. Lefevre
 Stone v. Matthews
 Hooker v. Brettal
 Hopson v. Croome
 Parry v. Jebb
 Cook v. Black
 Davies v. Thorne
 Middleditch v. Saunders
 Hodgson v. Lowther
 Lantour v. Holcombe
 May v. Selby
 Wansey v. Towgood
 Attorney General v. Milner
 Robertson v. Dean
 Edgar v. Fry
 Evans v. James
 Youde v. Jones
 Danks v. Otway
 Alexander v. Foster, *exceptions*
 Powell v. Powell, *fur. dirs. and cs.*
 Pys v. Lynwood, *ditto*
 Campbell v. Campbell, 2 causes,
exceptions, fur. dirs. and costs
 Kirkwall v. Flight, *exceptions*
 Christian v. Chambers, *further
 directions and costs*
 Griffin v. Williams
 Bowmer v. Parkinson

Ford v. Clough, *fur. dirs. and costs*
 Short—Gurney v. Cosway, *ditto*
 Watts v. Sherwood
 Eades v. Harris
 Bennett v. Risley, *fur. dirs. & costs*
 Cooper v. Emery, *exceptions*
 Kirkwall v. Flight, *fur. dirs. & cs.*
 Price v. Harding, *ditto*
 Jenkins v. Cooke
 Sharman v. Heath—Howe v.
 Ditto, *fur. dirs. and costs*
 Charnock v. Charnock
 Preedy v. Baker
 Smith v. Baker, *exons. & fur. dirs.*
*Causes set down for hearing in
 Trinity Term, 1841.*
 Massey v. Day
 Eld v. Durant
 Mayor and Corporation of Car-
 narvon v. Evans
 Stephenson v. Everett
 Barfoot v. Buckland
 Moorhouse v. Colvin
 Barfield v. Rogers
 Allen v. Wadley
 Burton v. Manson
 Farmer v. Farmer
 Meigh v. Baker
 Brown v. Edwards
 Langford v. Reeves
 Collins v. James
 Overt v. Patching
 Stiven v. Jenkins
 Dyson v. Morris
 Lake v. Bartholomew
 Compton v. Storey
 Bultell v. Lord Abinger
 Attorney General v. Mayor and
 Corporation of Newark
 Fairfax v. Morrell
 Roberts v. Corporation of Car-
 narvon
 Mann v. Mills
 Vicars v. Oliver
 Wright v. Lockwood
 Trevanion v. Sargon
 Vicq v. Le Bailey
 Powell v. Woollam
 Russell v. Buchanan
 Willetts v. Willetts
 Fisher v. Great Western Railway
 Cottingham v. Stapleton
 Forbes v. Peacock, *exceptions*
 Watson v. Webb
 Crawford v. Fisher
 Attorney General v. Baines
 Trevor v. Trevor, *exons. 3 sets*
 Taylor v. Jardine
 Birch v. Joy, *exons. 2 sets*
 Attorney General v. Cowper
 Spence v. Butler } *fur. dirs. and*
 Gunn v. Ditto } *costs.*
 Bird v. Blyth
 Farmer v. Farmer
 Genge v. Matthews
 Bute v. Stuart, *exons. insufficiency*
 Scott v. Pascall
 Vivian v. Swansea Water Works
 Company
 Plunkett v. Lewis, *exons. and fur.
 dirs.*
 Cragg v. Forde, *exons. 2 sets*
 Hand v. Wrench
 Gill v. Rundle
 Johnson v. Child
 Rogers v. Ashcroft

Dunn v. Dunn, *fur. dirs. & costs*
 Tipping v. Power, *ditto*
*Ne w Causes set down Michaelmas^d
 Term, 1841.*
 Petty v. Briggs
 Baron Alvanley v. Edwards
 Burden v. Oldaker
 Booth v. Allington
 Seagar v. Smith
 Wright v. Taylor
 Wright v. Frith
 Clare v. Wood
 Hirst v. Bradley
 Goodricke v. Thaker
 Attorney General v. Mayor of
 Bristol
 Wade v. Russell
 Warne v. Greene
 Hetherington v. Hesselstine
 Warden, &c. of Clan Hospit al v.
 Earl Powis
 Barnano v. Vitter
 Fuller v. Woods
 Scott v. Rideout, *at defendant's
 request*
 Sheppard v. Clutterbuck
 Sykes v. Gyles
 Cobley v. Wells
 Cozens v. Cozens
 Gibson v. Prosser, *at defendants's
 request*
 Gawen v. Gawen
 Thomas v. Williams
 White v. Husband
 Kenward v. Henty
 Robertson v. Great Western Rail-
 way Company
 Minor v. Minor
 Harrison v. Lane
 Colby v. Scotchmer
 Lord Muncaster v. Lady Mun-
 caster
 Dixon v. Clarke
 Whiche v. Hunt
 Lovell v. Yates
 Kuse v. Lawson
 Bartlett v. Bartlett
 Moore (pauper) v. Dearden
 Sutton v. Torre
 Short—Butler v. Butler
 Short—Potts v. Hadfield
 Attorney-General v. Bath
 Ditto v. Reynolds
 Owens v. Dickinson
 Cockburn v. Singleton
 Taylor v. Bailey
 Carr v. Collins, *fur. dirs. and
 costs*
 Mitford v. Reynolds, *ditto*
 Attorney General v. George, *ditto*
 Leathes v. Leathes, *ditto*
 Talbut v. Andrews, *ditto*
 Branch v. Paimrose, *ditto*
 Shore v. Lee, *ditto*
 Mackintosh v. Henderson, *ditto,
 and petition*
 Wheeler v. Wheeler, *fur. dirs. &
 costs*
 Edwards v. Williams, *ditto*
 Short—Suwerkrop v. Rahn, *ditto*
 Short—Roberts v. Allen, *ditto*
 Godson v. Auther, *ditto*
 Robinson v. Milner, *exceptions*
 Cole v. Stately, *fur. dirs. & costs*
 Bell v. Saunders, *ditto*

Queen's Bench.

CROWN PAPER.—*Michaelmas Term, 1841.*

Middlesex	—The Queen v. Eastern Counties Railway Company on prosecution of Price & others.
	—Same, on prosecution of Collingridge.
Leicestershire	—Leicestershire and Northamptonshire Union Canal Company.
Somersetshire	—William York.
Lancashire	—Guardians of Wigan Union.
Suffolk	—Mayor of Ipswich.
Wilts	—Charles Spackman and others.
Lancashire	—Commissioners of Broughton Inclosure.
St. Alban's	—Inhabitants of Waterford.
Berkshire	—John Touch
Derbyshire	—John White, one of the Trustees of the Thornset Turnpike Trust.
Middlesex	—Churchwardens, &c., of St. Pancras, on prosecution of Skinners' Co.
London	—Master, &c. of Society of Scriveners of London, on prosecution of Page
Middlesex	—Vestrymen of Marylebone.
Notts	—George Clark and another.
Hants	—London and South Western Railway Company.
Lancashire	—Richard Gould
Middlesex	—Inhabitants of St. Giles in the Fields.
Lancashire	—Churchwardens of Liverpool.
W. R. Yorkshire	—Inhabitants of Rishworth.
Leicester	—Inhabitants of Oundle
	—Inhabitants of St. Margaret's, Leicester.

Court of Requests.

GENERAL LIST OF PETITIONS FOR HEARING AT WESTMINSTER DURING MICHAELMAS TERM, 1841.

Webb v. Moore	Wright v. Daintry and Ryle;	Toms v. Stanley
Bates v. Bates	Smith v. Smith, 2 causes	Spicer v. Kipping
Gem v. Rumsey	Sharp v. Daintry	Whiteside v. Wright
Trimmer v. Chalk	Jones v. Storm	Sharp v. Yeld
Saunders v. Fuller	Eyre v. Biddulph	Lawrence v. Philips
Bowly v. Wilkins	Davidson v. Caldecott	Richardson v. Warwick
Scott v. Elkins	Merton v. Procter	Skulthorpe v. Forcell
Stewart v. Bond	Samuel v. Philpot	Wright v. Daintry
Tinquand v. Vanderplank	Hampson v. Burkill	Marples v. Dainsfield
Saunders v. Innes	Brinton v. Jackson	Grattan v. Grattan
Masters v. Price	Carr v. Atkinson	Kingsford v. Kingsford
Woodgate v. Little	Rogers v. Robbins	Jaudon v. Wright

THE EDITOR'S LETTER BOX.

In pursuance of the plan which was carried into effect in the two last volumes, it is our intention to render the volumes for the session 1841—1842, as complete as possible in themselves. While all the old heads of information are kept up, it will be our endeavour to open new sources of information. New subscribers will find the commencement of the twenty-first volume, beginning with November 1840, as a convenient date from which to begin their sets.

The suggestions of "An Attorney," for the adoption of the "Oxford System" in the Examination, shall be noticed.

We will consider the request of an additional page for the purpose suggested.

We were much obliged by the information sent us last week as to the Chancery Counsel, but it arrived too late to be used.

A correspondent on the effect of the New Orders in Chancery, inquires, whether every solicitor, having a place of business more than two miles from Lincoln's Inn Hall, and not in London, Southwark, or Westminster, is bound to have a place within these districts for the purpose of receiving notices, &c. He is so required by the 2d Order, and if he neg-

lect, then the fixing up the notice in the Six Clerk's Office will be sufficient. No doubt it would be better to have relieved the sinecurist from the reception of 6d. or 10d. per folio for office copies, and to have enabled the solicitors to deliver copies of the pleadings, as in the Common Law Courts. Our correspondent also regrets the loss of the convenience of serving all the London Solicitors in ten minutes, with ease and accuracy. At all events, the class which he represents already dread the winter nights, when they will have the luxury of perambulating from Bow to Bayswater.

The further letters on the Law of Attorneys Bill shall receive early attention.

The letters of W. E. S.; C. L.; and E. F., have been received.

We think Mr. Cooke's Work on Short-hand is the one best suited to F. S.

We believe we have stated all the cases down to the last on the often discussed question of the power of a husband to dispose of his wife's reversionary interest. We shall continue to watch the subject.

We presume there can be no doubt that Attorneys have an undeniable right to be admitted into either the New or Old Courts of the Central Criminal Court, and that the door-keepers are not justified in refusing them admission. The proper application would be to the Lord Mayor, who is the presiding Magistrate.

The Legal Observer.

SATURDAY, NOVEMBER 13, 1841.

— “ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE EXCHEQUER BILL FRAUD.

THE credit of a government must be maintained at all hazards. If once a doubt is thrown on either its power or its will to fulfil the engagements entered into on its behalf, public confidence is shaken, and one of the main supports of the state is withdrawn. A government may be, indeed must be, in many cases, arbitrary; but, if it be wise, it will never throw any doubt on those transactions by which its business is carried on. These being, as we conceive, political truisms, we think, if they be applied to the affair that is now agitating the public mind, they will prove that there is only one course open to the government to pursue. The Exchequer bills which have got into circulation, appear, according to the evidence before the public, more or less to have the appearance of genuine bills. They have all been numbered by the proper officer, although not signed by him. They are on the genuine Exchequer bill paper, and it was impossible for the most experienced dealer in them to distinguish the forged bill from the true bill. They have, it is true, been irregularly issued; they have not proceeded in all cases from the proper custody, but once out of the first hand, or, at any rate, the second hand, all guilty knowledge has ceased, and the present holders have paid value for them; and, under these circumstances, we consider that it would be highly injurious to public credit if the claims of these holders were not recognized by the government: if any other course be pursued it will throw doubt, not only on all dealings in Exchequer bills, but on all other government securities. We may hear next that there have been fraudulent inscriptions in the Bank books; false stock

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may be bought and sold; false money may be coined at the Mint,^a may get into circulation through an irregular channel, and the government may still say it cannot redress the grievance: the dealings between man and man may be paralysed, and the worst consequences may ensue.

Thus far as to the policy of the case; but we also apprehend that the rules of law will oblige the government to recognize the claims of the holders of these bills. The true question appears to us to be, who was trusted in the matter? Was the individual from whom the bill was received looked to, or was the government considered, by the person who paid his money for the bill, as responsible for its repayment? We apprehend it will not be denied that it was the government.

Now we conceive the settled rule to be in these cases, that an agent contracting in behalf of the government, or of the public, is not personally bound by such a contract, even though he would be bound by the terms of the contract if it were an agency of a private nature—it is the government which is bound.^b The natural presumption in such cases is that the con-

^a To shew that this is not impossible, we may refer to the case of the Earl of Lauderdale, or Lord Halton, Treasurer Depute of Scotland, and others, for official malversations respecting the Royal Mint of Scotland, 11 State Trials, 157. Among the charges against him are—“ 2. In making the fineness below the standard. 3. In coining 17,000 stones of copper money beyond the quantity contained in his Majesty's two warrants for the copper journeys.” See also, as giving some information bearing on the present case, the Bankers' case, in the 14th volume of the State Trials, p. 1,—more especially the celebrated judgment of Lord Keeper Somers.

^b *Macbeth v. Haldernand*, 1 T. R. 172.

tract was made upon the credit and responsibility of the government itself, as possessing an entire ability to fulfil all its just contracts, to use the words of Mr. Justice Story,^c "far beyond that of any private man, and that it is ready to fulfil them with punctilious promptitude and in a spirit of liberal courtesy. Great public inconvenience would result from a different doctrine, considering the various public functionaries which the government must employ in order to transact its ordinary business and operations."

This principle not only applies to simple contracts, both parol and written, but also to instruments under seal, which are executed by agents of the government in their own names, and purporting to be made by them on behalf of the government; for the like presumption prevails in such cases, that the parties contract not personally, but merely officially, within the sphere of their appropriate duties.^d

The class of cases which establish this rule, than which none is better established, appears to us to apply to the fraudulent Exchequer bills. Business was so loosely conducted by the government officer entrusted with their issue, that fraud might be easily committed. The public, the innocent purchasers, could not know this—they looked to the government, not to the person from whom they purchased, the agent, as responsible; and if the government, by its own negligence, allowed the public to be thus liable to be deceived, the loss must fall not on the private individual, but upon the state.

Thus, we conceive, as well on the ground of enlarged public policy, as of the strict law of the case, the holders of the fraudulent bills must recover.

THE CHANCERY COMMISSION.

THE Lord Chancellor has issued a Commission to inquire into the State of the Court of Chancery. We have not yet seen the terms of the Commission, but we have reason to believe that they are sufficiently extensive. They will embrace the pleading—the evidence—in short, the whole procedure of a suit in Chancery. We hail this step as by far the most important that has as yet been taken in the great cause of

Chancery Reform. The selection of the Commissioners could not have been better. In the names of Lord Langdale, Vice Chancellor Wigram, and Mr. Pemberton, we recognize the men the most willing and the most able to conceive and to carry through an extensive scheme of reform. We beg to express the fullest confidence both in their zeal and their ability. We now, indeed, believe that the good work has begun in earnest, and that the general plan of reform proposed in this work, to which we alluded last week, if not adopted, will be seriously considered, and, as we have already seen, a part of it effected,—so we do not despair of finding many other portions of it, if not the whole, become the settled procedure of the Court.

THE BUSINESS OF THE COURT OF QUEEN'S BENCH.

NEW TRIALS.

THE first four days of this term passed, and somewhere about fifty motions were made for new trials. On the evening of the fourth day, a list of cases intended to be moved, was drawn up, amounting to nearly half as many as had already been heard. The Judges expressed surprise, and intimated a stronger feeling at this circumstance. At the close of the third day, their Lordships had suggested an intention of enquiring into the cause of the delay, should the motions for new trials appear to be so numerous as to require them to extend into the fifth day of the term. They did so—and yet no such inquiry was made. The fact is, that the Judges felt that, however they might regret the circumstance, there was no blame justly to be attached to any one. The whole evil,—and the Judges described it as an evil,—was in the system. They felt this, and they were silent. They took occasion, however, on the evening of the fifth day, to read a sort of admonitory lecture to the attorneys, as to what would be done in ensuing terms. May we be allowed to suggest, that the remedy is not in the hands of the attorneys, nor of the barristers, nor of the clients, but in those of the Judges themselves. It is in vain to expect from any body of men, the performance of a duty before the moment at which it becomes necessary. Human nature will defer and delay, as long as it can, any troublesome, and even very laborious, effort. As long as the rules of the Court allow motions to be made on any one of the first four days of

^c Story on Agency, p. 265, who cites as well various American as English reporters as authorities.

^d *Union v. Woolsey*, 1 T. R. 674; *Gidley v. Lord Palmerston*, 3 Brod. & Bing. 275.

term, the motion is likely to be put off to the fourth day, and then (as always does in fact happen) the pressure of business becomes too great for the allotted time, and the next day is inconveniently occupied with it. So long as the opportunity for delay is given, that delay will take place. The Court alone can remedy the evil, and that remedy may be afforded in the simplest possible manner. Let the Court issue a general rule, declaring that on the afternoon of the first, or before half-past nine of the morning of the second day of term, the list of cases in which it is intended to move for new trials shall be completed, so as to be handed up to the Chief Justice on his entering Court on the second day of the term; that in no other cases but in those included in such list, shall any motion for a new trial be permitted, and that the cases shall be called on in the order in which they stand in such list. Let the Judges, in fact, do that on the first, or at farthest the morning of the second day of term, which they always do on the evening of its fourth day; and there will be no such complaints as Lord *Denman* made, and justly made, on the evening of Saturday last, of the evils resulting from the delay of these motions. But let us not be misunderstood:—When we speak of his Lordship's complaints as justly made, we apply that expression to his description of the public evil—not to that part of his observations which seemed to imply a censure on the attorneys. For we repeat that where a system tolerates, if it does not absolutely encourage delay, the evil consequent on that delay is to be charged on the system, and not on the men who, by habit rather than active volition, avail themselves of it.

PEREMPTORY PAPER.

Let us now turn to another part of the practice of this great Court,—the most important of our Common Law Courts, the most pressed with business, and therefore, the one that most peremptorily calls for observation and regulation. The learned Judges of this Court have abolished the Peremptory Paper. As the Peremptory Paper was managed, it was an unmitigated evil: as it might have been managed, it would have been a great benefit; and we doubt much whether the Court will not have to re-establish it. But if re-established, it must be upon an entirely different foundation from that on which it originally stood. The suspicion that its re-establishment will be necessary, arises

not only from practical knowledge of the inconvenience consequent upon the want of some compulsion on parties to bring on motions, the decisions of which they have, in many instances, a positive interest to delay; but from some expressions which Lord *Denman* himself used on Wednesday and Thursday last, in observing on the number of enlarged rules, and the absence of Counsel. Let us then suppose the Peremptory Paper about to be re-established, and we ask permission respectfully to suggest to their Lordships one regulation which will convert it from an evil into a benefit. When Lord *Mansfield* originally established it, in Hilary Term, 6 Geo. 3, (the rule of Michaelmas Term, 30 Geo. 2, was but an attempt that way) one part of the rule was (3 Burr. 1842) that the cases in the Peremptory Paper should be called on "after the whole bar shall have moved." In these few words lay the germ of that evil which finally led the Court to abolish the Peremptory Paper itself. When a motion is to be made, there is an active pressing necessity, which urges men on to make it at the earliest opportunity. But having been made, the evil it was intended to prevent having been at least stayed, if not wholly averted, the object being partly attained by the public expression of the wish to attain it, the desire to bring it on for discussion and decision is less urgent; and should one party incline to press it forward, there are many causes of etiquette, of courtesy, of convenience,—to say nothing of the ever-enduring delay in the preparation of affidavits,—which may postpone the discussion of the rule, and leave its final termination to the chapter of chances. The general rule made by Lord *Mansfield* ought, therefore, to have been to hear motions (which are new business,) after disposing of the Peremptory Paper, (which is old business) and had such been the rule, the vexations of counsel, the wearisome attendance of attorneys, and the thereby heavily increased bills of the clients, would never have been united into such a bundle of complaints as to crush the very existence of the Peremptory Paper under its weight.

Most respectfully do we offer these suggestions to the Judges, whose earnest desire to promote the healthful despatch of public business, will, we are convinced, ensure them a candid, and indeed an indulgent consideration.

THE LAW OF EVIDENCE.

BEST PROOF THAT CAN BE ADDUCED.

THERE are few parts of the Law of Evidence which demand more attention from the practitioner than that of ascertaining the best evidence of which the nature of each case is capable. Probably, as many nonsuits and failures of defence occur from defects or omissions in this respect as in any other branch of the practice at Nisi Prius. It will, therefore, no doubt be acceptable to a considerable class of our readers to have the principal cases collected for their use; and it may be convenient for this purpose to arrange the decisions under the following heads:—1st. with respect to the production of records and proceedings of Court; 2d. of public books and documents; 3d. of deeds and wills; and 4th. of letters and papers.

1. As to the *Records and Proceedings of the Court.*

In an old case upon a question whether the *Abbey de Sentibus* was an inferior Abbey, or not, *Dugdale's Monasticon Anglicanum* being produced for evidence, was refused, because the original records might be procured from the Augmentation Office. 2 Show. 163.

If a witness be called to testify what another swore on a former trial, the record of such trial must be produced, or his evidence will not be admitted, but the production of the record of Nisi Prius, and the postea indorsed, will be sufficient. *Piton v. Walter*, 1 Str. 162. The person called to prove what a deceased witness had said on a former trial must repeat his very words, and not merely swear to their effect. *Lord Palmerston's Case*, cited 4 T. R. 290.

With regard to the production of the records of the Court of Chancery, where an answer is required to be produced as evidence upon a trial at Law, the Court, except in a criminal case, will not permit the record itself to be sent, but an office copy must be obtained, unless proof of the signature should be necessary. *Jervis v. White*, 8 Ves. 313. It has also been held that a witness cannot be cross examined as to what he swore in an affidavit, unless the affidavit is produced. *Sainthill v. Bound*, 4 Esp. 74.

In an action by an attorney, for words reflecting on him in the conduct of a cause, the proceedings, &c., in the cause must be produced in evidence. Nor is it sufficient to dispense with the production of them, that the costs have been taxed and all the papers given up. *Parry v. Collis*, 1 Esp. 399. And in order to set aside a verdict and judgment, obtained by the attorney without leave of the client, the best evidence is the affidavit of the client, which must therefore be produced. *Heath v. Ycomans*, 1 Anst. 271.

2. As to *Public Books and Documents.*

In a case where a licence to trade, granted by the Crown, was lost, parol evidence of its contents was not admitted; because there must

be a register of it in the Secretary of State's office, and that register would be the best evidence. *Rhind v. Wilkinson*, 2 Taunt. 237. So, where the question was, whether the defendant had put on board the plaintiff's ship some articles of a combustible and dangerous kind, without giving due notice of their nature; and it appeared in evidence that the goods were delivered by the officer of the defendants with a written order to the plaintiff to receive them, in which nothing was said as to their nature; that they were received by the chief mate of the plaintiff's ship, who had since died, and that no other person was present at the delivery; and it was further proved by the captain of the ship and the second mate, that no communication had been made to either of them, nor, as far as they knew, to any other person on board; the plaintiff was nonsuited, on the ground that he had not given the best evidence of the want of notice, which it was in his power to produce by calling the Company's officer, who delivered the articles on board; which nonsuit was afterwards affirmed by the Court of K. B. "The best evidence," said Lord Ellenborough, "should have been given of which the nature of the thing was capable. The best evidence was to have been had by calling in the first instance upon the persons immediately and officially employed in the delivery and receiving of the goods on board, who appear in this case to have been the first mate on the one side, and the military conductor on the other. And though one of these persons, the mate, was dead, it did not warrant the plaintiff in resorting to an inferior and secondary species of testimony, namely, the presumption and inference arising from a non-communication to other persons on board, as long as the military conductor, the other living witness immediately and primarily concerned in the transaction of shipping the goods on board, could be resorted to: and no impossibility of resorting to this evidence was suggested to exist in this case." *Williams v. East India Company*, 3 East, 192.

With regard to entries in the Bank books, copies of such entries are evidence; but upon a question whether the signature to a transfer is genuine, the book itself must be produced. *Auriol v. Smith*, 18 Ves. 198.

A terrier cannot be received in evidence unless from the register of the diocese, or a copy from the parish register, if the original cannot be found. *Atkins v. Hutton*, 2 Anst. 386.

To prove that the defendant had been elected constable of a ward, it was held not sufficient that a clerk in the town clerk's office produced a list of the persons sworn in to serve the office, in which the plaintiff's name was inserted as having been sworn in as substitute for the defendant: the wardmote book, containing an account of the election, should have been produced. *Underhill v. Wills*, 3 Esp. 56.

3. As to *Deeds, Wills, &c.*

An attested copy of the memorial of the assignment of a judgment is evidence of the fact of the assignment. So the attested copy of

the memorial of the registry of a deed is evidence of the fact of the registry; but if the memorial be used as evidence of the contents of the deed, the original must be produced. *Hobhouse v. Hamilton*, 1 Sch. & Lef. 207; and see 1 Leon. 184; 1 Salk. 389. And the memorial of a conveyance that has been registered, is not evidence of the contents of such conveyance, unless notice has been given to the opposite party to produce the conveyance. *Melton v. Harris*, 2 Esp. 549.

When a deed is in the possession of the defendant, who has notice to produce it, but does not, an examined copy is evidence without proof of the defendant's execution of it. And though there are more parts of a deed than one which is in the defendants' possession, but who does not produce it after notice, the plaintiff is not obliged to produce in evidence one of the originals, but may give a copy in evidence. *Doxon v. Haigh*, 1 Esp. 409.

If two parts of an instrument are prepared, but one only is stamped, the party having the custody of the unstamped part may give secondary evidence of the contents of the agreement, if the other party refuse, on notice, to produce the stamped part. *Garons. v. Swift*, 1 Taunt. 507; *S. P. Waller v. Horsfall*, 1 Camp. 601.

A copy of a deed to lead the uses of a fine, enrolled for safe custody only, may be read as evidence upon a trial. *Combs v. Spencer*, 2 Vern. 471; *Combs v. Dowell*, *Ibid.* 591.

A probate in the Ecclesiastical Court is not evidence in the Court of Chancery that copyhold estates would pass by the will. *Jervise v. Duke of Northumberland*, Jac. & W. 570; and where notice was given to the defendants as executors, to produce the probate of their testator's will at a trial, it was held that a document purporting to be the original will, and produced by an officer of the Ecclesiastical Court of Chester under the seal of that Court, was admissible as secondary evidence to show that their testator had acknowledged therein that he had received the money in his lifetime for the use of the plaintiff. *Gorton v. Dyson*, 3 Moore, 558.

Where the plaintiff declared on bond with a proferit; on *non est factum* pleaded, secondary evidence of the bond by means of a copy, and shewing that the defendant had taken away the original, and before action brought, said he had burnt it, is not sufficient to sustain the declaration. *Smith v. Woodward*, 4 East, 585.

But in a case where a loss having been settled on a policy against fire, the plaintiff, in an action for a libel charging him with fraud respecting such loss, not being able to produce the original policy, called the agent of the company, who stated that the policy was returned after the fire, which happened six years ago, and that on the loss being settled, it became a useless paper, and it being also proved that the policy was not in the plaintiff's possession, although a diligent search had been made: it was held, that this evidence was sufficient to entitle the plaintiff to give secondary evidence of its contents. *Brewster v. Sewell*, 3 B. & A. 296.

4. As to Letters and Papers.

To let in secondary evidence, the best evidence of the loss of the original document that the case admits of, ought to be given: therefore, if a party has delivered a letter to his daughter, and previously to the trial, a witness has made a diligent search for it, assisted by the daughter, and could not find it; this is not evidence of loss to let in proof of its contents without calling the daughter; but, if the party had kept it in his own custody, and had set a person to search who could not find it in any of the places where letters were kept, that would be sufficient. *Parkins v. Cobbett*, 1 C. & P. 282.

A plaintiff is not at liberty to give secondary evidence of the contents of a document, if his witnesses trace it to a person, who is not connected with the cause, without calling that person. *Freeman v. Arkell*, 1 C. & P. 135. But a plaintiff may give secondary evidence of the contents of a written paper, if the persons in whose possession it was, proved that they had made diligent search for it and could not find it. *Harper v. Cook*, 1 C. & P. 139.

Proof of delivery of a paper to the servant of the defendant is not of itself sufficient to enable the prosecutor to give parol evidence of it. *Rea v. Pearce*, Peake, 76. And where a letter which had been in the possession of the defendant, was filed in the Court of Chancery, pursuant to an order of that Court, secondary evidence of its contents is not admissible, it being in the power of either party to make an application to that Court to produce it. *Williams v. Munnings*, 1 R. & M. 18. But a merchant's copy book of letters may be read where the person who has the original letters refuses to produce them. *Sturt v. Mellish*, 2 Atk. 611.

In trover, if there be as well a verbal as a written demand, and the verbal demand have reference to that in writing, the writing must be produced; but, if they are concurrent and independent, the latter will not supersede the former. *Smith v. Young*, 1 Camp. 439. So, verbal admissions by a party of his having been supplied with goods, may be given in evidence though it should appear that he has signed his name at another time to an account acknowledging the receipt of them. *Jacob v. Lindsay*, 1 East. 460. So, in proof or disproof of handwriting, the supposed writer of the instrument need not be called, but the evidence of persons well acquainted with his style of writing will be sufficient. 2 East C. C. 1000, 1, 2.

EQUITABLE RELIEF AS TO WILLS.

As a general rule, a Court of Equity will not set aside a will of real estate, nor interfere between heir and devisee, till the validity of the will is settled at law. The jurisdiction as to the validity of a will of personal estate belongs to the Ecclesiastical Court, and that of a will of real estate to the Common Law Courts. But where there is an equitable jurisdiction in the case this will be different; in each case a

Court of Equity, having the will before it, will entertain the question of its validity, and will direct an issue *devisavit vel non*. Thus, where there are outstanding terms to be removed, and the validity of the will came in question, an issue *devisavit vel non* was directed.^a A receiver has sometimes been appointed as between heir and devisee; this was done in the case of *Buckland v. Soutten*,^b although there appears some doubt whether this was not by consent.^c However, an issue will certainly be directed by a Court of Equity wherever the case is entertained.^d

The cases which have been usually cited as authorities for the proposition that a Court of Equity will not entertain the question of the validity of a will, have been recently very closely examined in the Court of Equity Exchequer, and we shall give the observations of the Lord Chief Baron as to them. The first of these cases is *Kerrick v. Bransby*,^e which was cited by Mr. Bethell to prove that Courts of Equity had no jurisdiction whatever in trying the validity of a will; no jurisdiction as to a will of personalty, because that belongs to the Ecclesiastical Court; and none as to a will of real estate, because that was a question of law to be decided by a jury. "Upon looking at that case, there is not the least doubt that the abridgment of it, as given by the reporter at the top of it, corresponds with Mr. Bethell's quotation, because it is this:—'A will cannot be set aside in equity for fraud or imposition; because if it is of personal estate; it may be set aside in the Ecclesiastical Court, and if of real estate, it may be set aside at law, on the issue *devisavit vel non*.'" That is a very imperfect statement, because an issue *devisavit vel non* is in truth determined in a Court of Equity; after it is tried, a Court of Law can do nothing; it is still before a Court of Equity. However, when you come to look at the case of *Kerrick v. Bransby*, it will be found to furnish anything but an authority for that digest of it. It was a case of a bill filed for the purpose, undoubtedly, of setting aside a will, and for taking other proceedings incidental to a Court of Equity, and to that bill an answer was put in. The imposition and fraud were denied by the answer, and the cause went to a hearing upon the evidence; and upon the evidence it was clearly established that there was neither fraud nor imposition in making the will. The only evidence of fraud was the declaration of a witness, Mrs. Hartshorn, who stated that the testator was incompetent, and did not know what he was about. It was proved by a witness on the other side, that he was present when the will was given to her by the devisee to keep, and that she did keep it, and that then she urged no objection, and made no re-

mark upon it. Three witnesses were examined; the person who prepared the will was examined, and there never was a clearer or more distinct case in support of a will, notwithstanding Lord *Macclesfield*, from circumstances which he laid hold of, thought fit to make a decree to set the will aside. A very short and imperfect note of that case will be found in *Viner's Abridgment*, vol. 8, p. 167; it is evidently the same case, for there is Lord *Macclesfield's* very reasoning; and the reasons he states, as far as you can rely upon that report, are very imperfect to support his judgment. That decision was appealed from to the House of Lords, and upon appeal, the House of Lords reversed the judgment and dismissed the bill;—upon what ground? Every body knows that *Brown's Reports* contain the cases on both sides, and the substance of the decisions. When you look at the case in *Brown*, it is quite manifest that the whole case was heard on the merits; on the merits, therefore, the bill was dismissed, because the will was by the evidence clearly established, and no person who exercised a competent judgment, could doubt the propriety of establishing it. The decision, therefore, does not at all involve the question, whether or not a Court of Equity will entertain jurisdiction upon such a subject. In short, that case proves anything but the digest of it given by the reporter. The next case cited by Mr. Bethell, was that of *Andrews v. Powys*.^f "Now," said Lord *Abinger*, "the case of *Andrews v. Powys*, proves anything but the proposition for which it was cited; and yet it has been often cited for the same proposition, and I think I can shew the origin of the mistake. It was a very remarkable case of a testator who had made two wills, one of which was made in favour of the plaintiff below, and the other, some time afterwards, in favour of the defendant. The defendant below was *Andrews*, he had procured the will to be made in his favour, and he had obtained the probate of it. The plaintiff *Powys* filed a bill, having discovered that; and being in possession of the will which was made in his favour, he took proceedings in the Ecclesiastical Court, and obtained a certain monition to be issued for the purpose of revoking the probate, and the case was depending in the Ecclesiastical Court, and that Court had made an order upon the executor, to whom the probate had been granted, to bring the money into that Court. From that order an appeal was made to the delegates, and the order was discharged because the Court had no jurisdiction to direct money to be brought into Court; after which the plaintiff filed his bill stating all the circumstances. To that bill there was a demurrer, and the demurrer was argued on the ground that the Court of Equity had no jurisdiction in the case, but that it belonged exclusively to the Ecclesiastical Court; and moreover, that the plaintiff had no *locus standi in curia*; for that the defendant was the executor and had the probate,

^a *Clarke v. Dean*, 1 Russ. & M. 103.

^b 4 Y. & C. 373, n.

^c See 4 Y. & C. 376.

^d *Bennett v. Vade*, 2 Atk. 324; *Jones v. Jones*, 3 Mer. 161; *Tatham v. Wright*, 2 Russ. & M. 1.

^e 7 Bro. P. C. 437.

^f 2 Bro. P. C. 504, ed. Toml.

and that the plaintiff had no interest whatever, but that he only pretended to have an interest under a will which was not proved. The objection was very plausible, it was argued on demurrer. The *Lord Chancellor*, Lord Maclefield, over-ruled the demurrer, and afterwards made an order on the defendant, the probate executor, to bring in the money, and enjoined him from receiving any more money. Upon that there was an appeal to the House of Lords, and the House of Lords so far from dismissing the bill, confirmed the *Lord Chancellor's* decree. The appeal was dismissed, and the orders were all affirmed. Having shewn that these two cases did not establish the proposition contended for, Lord Abinger, C. B., cited, as the true qualification of the rule, the observations of Lord Hardwicke, in *Webb v. Clarendon*, 2 Atk. 424. "This Court will not determine there is fraud in procuring a will without a trial at law." "I take it," he continued, "that this Court does not hold original jurisdiction, and certainly it never can, to set aside a will either of real estate or of personal estate, or to establish a will; but the Court will, when it becomes necessary from the circumstances of the case that its jurisdiction should be exercised, proceed to investigate whether the will was properly made or not, though it will not decree against it, generally speaking, without an issue *devisavit vel non*. And where that issue has been determined, what is the Court to do? Is it to do nothing? Surely the Court must proceed to do something. The Court will either make an order for the delivery up of the will to be cancelled, or will grant a perpetual injunction against the party claiming under it, or *vice versa*. Then the principle really comes to this, that in cases where there is no occasion to resort to a Court of Equity,—and there are one or two cases of that sort to be found in the books, when there is a simple statement that the will was made by fraud and imposition, or that the testator was incompetent, and there is no impediment in the way of a trial at law,—the bill may be demurred to because it contains no matter upon which the party is entitled to relief in Equity, the heir at law may bring an ejectment, and he does not need the assistance of a Court of Equity. But in cases where he cannot try his ejectment without removing obstacles which are in his way, he may properly apply to the Court of Equity to remove those obstacles."

We have entered into this case more at length than usual, because many statements in opposition to it will be found in the text books. See 1 Wms. on Exors., p. 35, who says, "it is now settled that a will, whether of personal or real property, cannot be set aside in equity for fraud and imposition, because a will of personal estate may be annulled for fraud in the Ecclesiastical Court, and a will of real estate may be set aside at law."

POINTS OF PRACTICE, BY QUESTION AND ANSWER.

BANKRUPTCY PROCEEDINGS.

(See p. 4, ante.)

1. If the trading of a bankrupt is proved by the proceedings under the commission, the counsel for the opposite party have no right to look at any of the proceedings but such as have been used for that purpose. *Staford v. Clarke*, 1 Carr. & P. 24.
2. A certificated bankrupt cannot be discharged from arrest for a debt covered by his certificate, till it has been enrolled pursuant to 6 G. 4, c. 16, s. 96. *Jacobs v. Phillips*, 4 Tyrw. 652; S. C. Mee. & R. 195.
3. No parol evidence to explain depositions taken before commissioners of bankruptcy, can he received? *Wilson v. Poulter*, 2 Stra. 794.
4. A person who is interested in a commission of bankruptcy and the proceedings under it, is entitled to have them produced in a collateral cause. *Cohen v. Templar*, 2 Stark. 260.
5. Notwithstanding there has been no notice to dispute the commission, act of bankruptcy, &c. under the 46 G. 3, c. 135, s. 10, the proceedings are not conclusive evidence of the facts therein stated, but the Court is still to form a judgment upon them, whether they prove an act of bankruptcy or not. *Brown v. Forrestall*, Holt N. P. 190.
6. To render the proceedings under a commission of bankrupt, evidence, pursuant to Sir Samuel Romilly's Act, it is enough to shew that they are produced from the custody of the solicitor to the commission, or to prove the hand-writing of one of the commissioners before whom they were taken. *Collinson v. Hilear*, 3 Camp. 30.
7. The examination of a defendant before commissioners of bankruptcy, (proved to be correct) is receivable in evidence, although not signed by such defendant. *Boddenham v. Lewis*, Peake's Ad. Ca. 245.

ACTIONS IN BANKRUPTCY.

8. In an action by the assignees of a bankrupt for a debt due to the bankrupt, the defendant may plead a tender as to part, and give evidence of a set-off as to the remainder, without having pleaded the set-off. *Wells v. Crofts*, 4 Carr. & P. 332.
9. In trover by the assignees of a bankrupt to recover property in his order and disposition at the time of the act of bankruptcy, no demand and refusal are necessary. *Soames v. Watts*, 1 Carr. & P. 400.
10. The provisions of the 3 Jac. 1, c. 7, s. 1, and 2 Geo. 2, c. 23, s. 23, do not extend to the assignee of an insolvent or bankrupt attorney who may sue for business done by such attorney without delivering a signed bill to the client. *Lester v. Luzurus*, Tyr. & G. 129; S. C. 2 Cr. Mee. & R. 665.
11. The name of the official assignee (see 1 & 2 W. 4, c. 56, s. 22) was omitted in the de-

- claration by the assignees of a bankrupt, but the Court allowed it to be amended by inserting his name. *Baker v. Neave*, 3 Tyrw. 233; S. C. Cr. & Mee. 112.
12. It is a good answer to a plea of bankruptcy, that the certificate was obtained by fraud, though the enactment to that effect in 5 G. 4, c. 30, s. 7, is not repealed in 6 G. 4, c. 16. *Horn v. Ion*, 4 B. & Ad. 78; 1 Nev. & Man. 627.
13. The plaintiff, assignee of a bankrupt, having died, and another assignee having been appointed in his stead, the rule to enter a suggestion of such death on the record, in pursuance of the stat. 6 G. 4, c. 16, s. 7, is absolute in the first instance. *Westall v. Sturges*, 4 Moo. & P. 217.
14. The 44th section of the stat. 6 G. 4, c. 16, which enacts that "every action brought against any person for any thing done in pursuance of the act, shall be commenced within three calendar months next after the fact committed," does not apply to actions against assignees who only act in the disposition and distribution of the property of the bankrupt, and not under any power conferred on them by law, or for any special purpose under the act; for the act applies to acts done for the purpose of taking possession of the bankrupt's property by the commissioners or messengers acting under their warrant. Therefore, trover for a chariot seized by assignees on the premises of the bankrupt was held to be maintainable, although the action was not commenced by the owner against the assignees within three months after the seizure. *Curruthers v. Payne*, 2 Moo. & P. 429; S. C. 5 Bing. 270.
15. An objection to the sufficiency of depositions to establish an act of bankruptcy must be made at the trial. *Jacobs v. Latour*, 2 Moo. & P. 201; S. C. Bing. 130.

shall thenceforth, unless removed by some special order of the Lord Chancellor, be attached to such Vice Chancellor's Court.

2. That the title of the Vice Chancellor to whose Court any cause shall be attached shall be marked in every certificate granted under the second Order of the fifth day of May, one thousand eight hundred and forty-seven.

3. That, subject in every case to any special order made or to be made by the Lord Chancellor, every cause already heard by any Vice Chancellor since the first day of this present Michaelmas Term, be attached to the Court of the Vice Chancellor by whom the same has been heard, and every cause standing in the Lord Chancellor's book of causes down to and including the cause of *Hodges v. Daly*, shall be attached to the Court of the Judge to whom the same is appropriated in the said book.

4. That the plaintiff in every cause now in the Lord Chancellor's Court, whether already heard, standing for hearing, or otherwise, except those mentioned in the last preceding order, shall be at liberty to deliver a notice to his Clerk in Court, stating the name of the Vice Chancellor to whose Court he desires such cause to be attached, and to serve notice thereof on all parties to the cause: and in case the plaintiff shall neglect or omit so to do on or before the seventeenth day of November instant, the defendant or any one of the defendants, shall be at liberty to give such notice. And in case on the twenty-first day of November instant, no such notice shall have been given, then any person who may be desirous of applying to the Court in such cause, shall be at liberty to give such notice; and that the notice of the plaintiff, if given on or before the said seventeenth day of November instant, or if not so given, then the notice, whether of the plaintiff or of any one of the defendants first given after the said seventeenth day of November instant, and before the said twenty-first day of November instant, and the notice of the plaintiff, or of one of the defendants, or of the person desirous of applying as aforesaid, first given on or after the said twenty-first day of November instant, shall determine the Court to which such cause shall be attached, unless removed therefrom by any special order of the Lord Chancellor; and that no party or person shall move, peti-

NEW ORDER IN CHANCERY.

COURT OF CHANCERY.

Thursday, the eleventh day of November, one thousand eight hundred and forty-one.

WHEREAS an act was passed in the fifth year of the reign of her present Majesty, intituled "An Act to make further provisions for the Administration of Justice:" And whereas, under the powers in that act contained, two additional Vice Chancellors have been appointed.

NOW I DO HEREBY ORDER,

1. That in all informations or bills marked under the first Order of the fifth day of May, one thousand eight hundred and thirty-seven, with the words "Lord Chancellor," the plaintiff shall underneath the words "Lord Chancellor" write the title of one of the three Vice Chancellors at his option, and the cause

sion, or take any proceedings, until such notice has been given.

5. That all motions, petitions, and further proceedings in causes in the Lord Chancellor's Court, except any motions or proceedings which are now part heard, shall be had before the Judges to whose Court the same shall, under the provisions of these orders, be attached, unless removed therefrom by any special order of the Lord Chancellor.

6. That all notices of motion not in any cause, and all petitions not in any cause, which are presented to the Lord Chancellor, shall be marked with the title of one of the Vice Chancellors, and shall thenceforth be attached to such Vice Chancellor's Court, unless removed therefrom by any special order of the Lord Chancellor.

7. That the registrars shall keep distinct lists of the causes and other matters to be heard before each Judge.

LYNDHURST, C.

We understand that the Orders of August last, which were intended to come into operation immediately after the present Term, will be suspended. Ed.

REPEAL OF THE ATTORNEYS' CERTIFICATE DUTY.

To the Editor of the Legal Observer.

Sir,

In your last number I observe a defence of the "Attorneys' Certificate Duty," by a correspondent, who subscribes himself U. Z. L., and is, I believe, an old antagonist of mine, for if I mistake not, when you "obliged him by inserting a paper in favour of this duty," you, with equal courtesy, published my reply in your number for 26th November, 1836. As U. Z. L. has, after so long an interval, renewed the controversy, permit me to crave room for a few strictures on his last communication. He has found out that you, Sir, are a "repealer," and like "Lambro," Lord Byron's celebrated "sea-solicitor," is "much more astonished than delighted" at the discovery; I, Sir, on the other hand, am not at all surprised at your accession to our ranks, though I am truly grateful for your assistance, and trust that you will not relinquish your exertions until this unjust and most obnoxious impost is abolished.

U. Z. L. denies "that there is any semblance of degradation in the imposition of this duty;" be it so. Our complaint is not that we are *insulted*, but that we are unequally and unjustly *taxed*; the question is not one of professional dignity, but of finance; the payment of an annual duty of 12l. to government, is in itself neither creditable nor disgraceful, "quot

homines tot sententia," U. Z. L. may deem it a privilege to be allowed to pay, but the large majority of his brethren are, I am sure, unambitious of such a distinction, and if the impost be indeed an honour, it is like Malvolio's greatness—"thrust upon them."

In his next paragraph, U. Z. L. informs us that he "*thinks* Adam Smith complained that not one in twenty who were in the profession, were capable of pursuing it." Sir, if U. Z. L. had thought a little more before he penned this passage, he would not have misrepresented Adam Smith, or occasioned me much trouble in searching for a *dictum* which the "Wealth of Nations" I am confident, does not contain. Adam Smith nowhere asserts that "not one in twenty of our profession are capable of pursuing it;" but he does maintain, what is much more important to the proper determination of this question, "that a tax upon the profit of any particular employment, *when not proportioned to the trade of the dealer*, favours the great, and occasions some oppression to the small;"^a and he adds, (choosing by the way, the very example fixed upon by U. Z. L.) "that if this shop tax, which was originally intended to have been the same in all shapes, had been considerable, it would have oppressed the small, and forced almost the whole retail trade into the hands of the great dealers."^b

So much for the professor's evidence; now for the "Chancellor of the Exchequer, who gratified the lynx-eyed attorneys of his day, and supplied the wants of the country by laying on this much vilified duty." The attorneys' certificate duty, which U. Z. L. applauds, was most reluctantly imposed by Mr. Pitt in 1784, as a tax by no means unobjectionable, but rendered necessary by the exigences of the times; as a *war tax*, to be abolished when the war should cease; while its proposer, so far from wishing to gratify the 'lynx-eyed attorneys' either in the house or out of doors, refused to accede to the propositions of those gentlemen, who, 'from resentment' proposed a duty of 20l. or 30l., and fixed it at the annual sum of 5l. adding a small tax on every warrant issued, that "*Attorneys might contribute in proportion to their business, and the tax be freed from partiality.*"^c

For the next thirty years this duty remained fixed at 5l. annually; but in 1804, Mr. Addington doubled, and more than doubled it; why? because the Habeas Corpus act was suspended, and Martial Law proclaimed in Ireland, while Napoleon, who had that year added 400,000 men to his immense army, threatened us with immediate invasion. It became necessary therefore to sacrifice something, that we might preserve the remainder of our property; and the profession almost without a murmur submitted to the double burthen. The war, however, termi-

^a Wealth of Nations, Book V. chap. 2, art. 2.

^b *Ibid.*

^c Hughes' Continuation History of England 8vo. edit. Vol. 3, p. 254, and Hans. Parls. Deb. Vol. 25, pp. 786, 814. I have cited these authorities more fully in my former letters, and forbear to recapitulate them here.

nated, and six-and- twenty years of peace have succeeded to the glorious victory of Waterloo; yet the attorneys' certificate duty still continues fixed, not at the original sum which Mr. Pitt reluctantly proposed, but as it was doubled in 1804 by Mr. Addington. Now, sir, what inference must the profession draw from the treatment they have experienced from the financiers? Should it be, "contribute freely towards the exigencies of the state, whose rulers will relieve you when their peril shall have passed away?" or must we, in the bitterness of our hearts, adopt the sterner maxim comprised in two short words '*principiis obsta.*'

'But,' says U. Z. L., 'the war in which all classes and interests concurred;—(this again, sir is not a fact, but an assumption:—let it pass, however—) this war "not only developed the magnitude of our manufacturing and commercial resources, but had an important influence on the profession, by inducing those engaged in such pursuits to seek the improvement of the position of their sons by making gentlemen, in other words, attorneys of them," that is to say, these rich plebeian merchants and manufacturers obtained professional, as they might at the Horse Guards have obtained military, rank, 'by purchase;' from *gens de commerce* they became '*noblesse de la robe*,' and all these advantages they gained for the annual stipend which made Mr. Sampson Brass of Bevis Marks a gentleman; to this argument U. Z. L. is welcome—*valeat quantum.*

In the meantime, the "lynx-eyed attorneys" of 1804, acquiesced in the annual duty of 5*l.*, being "of opinion that it was desirable, and would operate as a check upon the professional increase." Poor mistaken individuals! why, even a certificate duty of 12*l.* per annum, has, as U. Z. L. acknowledges, "long since ceased to operate as a prevention to admission." On what ground are we then singled out as the objects of exorbitant and unjust taxation? Has the duty diminished our numbers? No, like the Hebrews under the Egyptian taskmasters, we increase and multiply in spite of the oppressor. But "it is a war tax"—Excellent! why the war annually employed hundreds of military and naval officers, who have since the peace flocked into our profession, and the tax is continued, when, after six-and- twenty years of peace, as our numbers annually increase, our individual profits lessen. Let me appeal from U. Z. L., the controversialist, to U. Z. L. the man of sense and moderation, and bidding him apply the old convivial maxim, "the more the merrier, but the fewer the better cheer," leave it to his candour to decide whether the attorneys' certificate duty should be abolished or retained.

Yet again, U. Z. L. regrets that in your previous argument you have adverted to the exemption from certificate duty which the clergy and the bar enjoy. Long may they enjoy it, and speedily may we participate in their immunities! We seek not to burthen them, but to free ourselves and our successors from oppression. As to the "auctioneers, the horse-dealers, the hawkers, the pawn-brokers, and the liquor-

sellars," the expenses of their annual licences are trifling when compared to ours; for these gentry we are not concerned; let them fight their own battles with the Chancellor of the Exchequer; it is enough for us to act upon the motto of your magazine,—"*Quod magis ad nos pertinet agitamus.*"

One word more, Sir.—U. Z. L. cavils at your calculation of professional profits, and by implication argues that you under-estimate their minimum, if you compute it at 1000*l.* per annum. Would to heaven, that U. Z. L. were accurate in his calculation; I suspect 200*l.* to 250*l.* would exceed our average profit. But let Adam Smith be re-examined before your readers are called on for their verdict—"Compute (says the Philosopher)^d in any particular place what is likely to be annually gained, and what is likely to be annually spent, by all the different workmen in any common trade, such as that of shoemakers or weavers, and you will find that the former sum will generally exceed the latter. But make the same computation with regard to all the counsel and students at law in all the different Inns of Court, and you will find that their annual gains bear but a very small proportion to their annual expense, even though you rate the former as high, and the latter as low, as can well be done."

LEGALIS.

Temple, 8th November, 1841.

MOOT POINTS.

ACKNOWLEDGEMENT OF DEEDS BY MARRIED WOMEN.

The following opposite opinions as to the proper construction of some of the clauses of the Fines and Recoveries Act, have lately been much discussed.

1st. It has been contended that sec. 77, which enacts that it shall be lawful for every married woman in every case (except that of being tenant in tail &c.) by deed to dispose of lands of any tenure, and so forth, must be considered merely as the enabling clause, substituting a more simple mode of assurance for the fine now abolished; and not as restraining or abridging any power previously possessed by a married woman, nor as adding the ceremony of examination and acknowledgement, in any case where, before the act, a fine was unnecessary; but that as regards all such previously existing and independent powers, whether given by act of parliament or created by deed or will, this section of the act must be considered as cumulative only.

2nd. Supposing such a construction to be denied, and sect. 77 standing by itself, admitted to apply to every deed to be executed by a married woman, that even then the following sect. 78, gives the effect above contended for, by providing that the powers given to a married woman by this act, shall not interfere with any power which, independently of this act, may be

^d Wealth of Nations, book 1, chap. 10, part 1.

vested in or limited or reserved to her, so as to prevent her from exercising such power."

In opposition to these opinions, it has been urged:

1st. That the intention of the Fines and Recoveries act was not merely the substitution of a more simple mode of assurance for the fine, but also to give to married women an additional protection against the influence of their husbands in the disposal of their property, even in those cases where powers have been entrusted to them by parliament or private individuals.

2d. That sect. 78, does not apply to general powers given to married women by acts of parliament, nor to any special powers created since the commencement of the Fines and Recoveries Act.

A COUNTRY ATTORNEY.

SELECTIONS FROM CORRESPONDENCE.

SERVICE OF CLERKSHIP.

Mr. Editor.

I have just read a letter signed "A Country Articled Clerk." No doubt the writer feels the inconvenience to which many of the country articled clerks are subjected, viz. "that of seeing little or nothing but conveyancing business during the period of clerkship." This is unfortunate, but I can assure him the articled clerks here, who in some, even large offices, see nothing but *common law* and *chancery practice*, and are scarcely called on to draw a single deed, would be glad to see a portion of that conveyancing, which he very rightly considers of the greatest importance. I have an articled clerk, who, as my small business consists of common law and some chancery, with but little of conveyancing, will be much at a loss as to the practical part of the last-mentioned branch of law. I endeavour to assist him by getting him to read the best conveyancing books I can procure, and in the vacation, he does, I trust, spend whole days at this employment.

I fear the country articled clerks have no remedy during their articles, but to read the best common law and equity books (including a good practice in all those courts) they can find.

P. A.

MERGER OF TERM.

In 1834, *Jane D.* mortgaged certain lands to her brother, *Joseph D.*, for 500 years for securing 800*l.*, and in the following year, by her will duly executed, she devised the same lands to her two brothers—*Joseph D.* (the mortgagee) and *Augustus D.*, as tenants in common in fee. Did this devise of the reversion merge the term of 500 years, either at law or in equity? or is it still subsisting? And is *Joseph D.*, the mortgagee, entitled to receive the whole, or only half of the mortgage money? I have not been successful in finding any case in point.

A. M. C.

SUPERIOR COURTS.

ROLLS.

TRUSTEES,—INDEMNITY OF.

Trustees are not entitled to retain an appointed portion of a trust fund, as a security for costs and expences, where the remainder is likely to prove an adequate indemnity.

The petition in this case was presented by one of the children of the late Mr. Simpson, in the pleadings named, and it prayed a transfer to him of the portion of the trust fund standing to the credit of the cause, which had been appointed in his favour.

It appeared, that on the marriage of the petitioner's mother with the late Mr. Simpson, a settlement was executed, by which the property in question was vested in trustees, upon trust to pay the interest and dividends to the mother for life, with a power of appointment in favour of her children. There were three children of the marriage, of whom the petitioner was one, and she having exercised her power of appointment in his favor to the extent of one-third of the settled property, he now sought, with her consent, to have the amount of it paid over to him. Sometime after the death of Mr. Simpson, Mrs. Simpson intermarried with the late Admiral Maitland, and on the occasion of this second marriage, a further settlement was executed, by which her life-interest under the first settlement was assigned to a trustee upon the trusts contained in the latter deed; and the application was opposed by this trustee, on the ground that a suit was now pending in the Court of Chancery, in which he had incurred considerable costs, and that if it proceeded, he might become liable to very heavy charges, from which he was entitled to be indemnified out of the trust funds, and that no portion of them ought therefore to be parted with until these claims could be ascertained.

Pemberton and *Sidebottom* for the petitioner, contended, that the annual amount payable to Mrs. Maitland being 430*l.*, there would be ample security, after payment of the amount sought to be transferred, for any claims to which the respondent could be rendered liable; and as a proof that he himself entertained this opinion, he had never sought to prevent the payment of the dividends to Mrs. Maitland, although the litigation to which he referred had been pending for several years.

Kindersly and *Hallett*, *contra*, urged, that as trustee their client had a lien upon all the property conveyed to him by the second settlement, and that as Mrs. Maitland was now advanced in years, the whole of her life interest could not be deemed more than a sufficient security for the expences to which he might become liable.

The Master of the Rolls said, that the objection made by the trustees, if well founded, would extend to prevent even the receipt of the income of the trust property by the widow,

which it was clear she had never contemplated, as she had received such income without any question. Trustees were entitled to be indemnified from costs and expences, but they could not be allowed to prevent the enjoyment of the trust property on account of such claim; and as the funds appeared to be ample after satisfying the petitioner's claim, the prayer of the petition must be granted. If it were thought necessary, an application might be made to stay the further payment of the annual income arising from the trust property.

Pemberton and Sidebottom, for the petitioner;
Kindersly and Hallett, for the trustee.

Ex parte Simpson, Nov. 4, 1841.

Queen's Bench.

[Before the four Judges.]

PRACTICE.

A writ of capias had issued out of the Common Pleas, under the authority of a decree in the Court of Chancery, on the 1 & 2 Vict. c. 110, s. 18, and the defendant was arrested on it. The defendant was then detained on a writ issuing out of this Court. The Court would not, upon a motion to discharge the defendant from custody on the detainer, decide in the first instance whether the arresting writ was rightly issued, but referred the party to the Court out of which that writ issued.

Mr. Pearson moved for a rule to discharge the defendant from the custody of the marshal as to this action. He founded his motion on an affidavit which stated that the defendant was arrested upon a *capias* which had issued out of the Court of Common Pleas, on the authority of a decree or order of the Court of Chancery, for the payment of certain costs declared in that order to be due from the defendant to a person therein named. The *capias* was issued under the provisions of the 1 & 2 Vict. c. 110. After being thus arrested, he was detained on several other writs, one of which was the writ which had been issued in this cause. The original arrest was illegal; the section of the statute did not authorise it to be issued in such a case, and consequently the defendant was entitled to his discharge on this detainer. He was stopped.

Per Cur.—We cannot discuss in the first instance the legality of this arrest, which has been made under a writ from the Common Pleas. The application must be made to the Court out of which the writ whereby the arrest was made originally issued.

Rule refused.—*Wright v. Sandford*, M. T. 1841. Q. B. F. J.

MAGISTRATE.—NOTICE OF ACTION.

Where a statute gives a magistrate the right to a notice of action, the mere fact that he has tendered amends will not dispense with the necessity of proving the notice.

Trespass and assault against a Magistrate. At the trial of the cause, the plaintiff put in a

notice of action, which was objected to on the ground that it did not state the place in which the assault was committed. The objection was held fatal. The plaintiff's counsel then contended that there need not be in this case any other proof of a notice of action than that afforded by the fact that the defendant had made a written tender of amends, in which the notice of action was set out at length: and in the matter stated in that action, the defendant tendered the sum of 50*l.* as amends. This tender was submitted to be a waiver of the notice. The learned Judge, however, was of a different opinion, and the defendant had a verdict.

Mr. Peacock now moved on both grounds to set aside the verdict and have a new trial. He cited *Cole v. The Bank of England*.

Per Cur.—It is clear that where a statute gives a magistrate a right to be served with notice of action, the mere fact of his having tendered amends will not dispense with the necessity of proving the notice. The statute requires that there shall be such notice; and it must be distinctly proved to have been given.

Rule refused.—*Martin v. Uppcher*, M. T. 1841. Q. B. F. J.

PROHIBITION.—ECCLESIASTICAL COURT.—SIMONY.

A proceeding against an ecclesiastical person tending to deprivation, must be taken according to the mode prescribed by the 3 & 4 Vict. c. 86.

Where, therefore, the Archbishop of York, on his visitation by his commissary, received in answer to some of his visitatorial articles, a letter from one of his clergy, charging the Dean of York with simony, and proceeded as under the visitation, and in that character alone, to a sentence of deprivation, this Court granted a prohibition.

The prohibition in such a case, lies after sentence, where the commissary's Court has merely adjourned.

Quære, whether it would lie if the commissary had dissolved his Court?

[Concluded from p. 12.]

Mr. Creswell, Sir W. Follett, Dr. Adams, and Mr. Cockburn, in support of the rule.—The Archbishop of York has no such power as he has here claimed to exercise. In the first place, such a power is opposed to the constitution of the church of England. In the next, it is opposed to the particular constitution of the cathedral church of York. The power of the ordinary, as visitor, does not extend to deprivation; for that purpose there must be a regular process, and the charge must be made and proved, and the answer heard in the ordinary and regular manner. A visitation is not a criminal proceeding, yet here the decision bears all the marks of a criminal proceeding of the highest nature; the dean is sentenced to be degraded from the dignity and place of dean, and to be deprived of every other ecclesiastical

tical preferment in the church of York. The Report of the Ecclesiastical Commissioners is wholly opposed to the present proceeding of the archbishop; and that report is signed, among others, by Lord Tenterden, Lord Wynford, the Archbishop of Canterbury, and the most eminent Judges of the Ecclesiastical Courts. That report first shews that there was not then any such power in the bishop as is now claimed, and that there cannot be at one and the same time a deprivation for the contumacy of not appearing to answer a charge, and a deprivation in respect of the charge itself. The first step required for such a purpose is the exhibition of articles; no articles have been exhibited here. Yet in a regularly conducted proceeding they are absolutely necessary, that the party inculpated may have an opportunity of objecting to their admissibility before being called on to answer them. Whatever charge was made in this case, was made *ore tenus*, and consequently no opportunity of that kind was afforded to the dean. If any objection had been made, it would have been against articles that did not appear, and against evidence that did not appear on the face of the proceedings of any ecclesiastical Court. If the bishops from ancient times have possessed the great powers now claimed for them, how absurd it was for the Ecclesiastical Commissioners to speak of the deficiency of means of superintendence over the clergy! how needless to recommend that new powers should be conferred on the bishops for that purpose! and how ridiculous the labour of the legislature in passing the act 3 & 4 Vict. c. 86, to confer these powers on the bishops! The fact that that statute has been passed is a legislative declaration that till it did pass the bishops had no power to do what has been tried to be done in this case. The bishop could not, before that statute, do any thing in his visitation but enquire. He possessed no power to adjudge and to punish. He may still enquire, but he is bound, even with the additional powers conferred on him by statute, to take proceedings in a regular and formal manner before he can adjudge. The bishop here has acted on the information obtained by him at the visitation—he has acted on it at once. Instead of doing that, he ought to have reduced the information into the shape of articles, which ought then to have been exhibited in the regular manner in the proper episcopal court. The case of *Walrond v. Pallard*,^b has been cited as shewing that the dean and chapter are visitable of the bishop of mere right, and certainly, in that case, that expression is used; but the Ecclesiastical Commissioners shew that that resolution was taken in an erroneous view of the law, and arose from the fact that such a power had once been claimed by the Crown, and was used immediately after the Reformation, but had never been exercised since that period, as in truth it had no good foundation in law. Visitations are only for enquiry; they resemble an inquest, and the bishop may appoint persons

to give him information^a as to the state of his diocese; but if he intends to act on that information, especially in the way of deprivation, he must go to the accustomed judicial place, to the proper ecclesiastical Court, and there require the person to answer the accusation. Ayliffe,^b Rogers,^c and Burns,^d all shew that a party cannot be deprived except by a judicial proceeding; and the same doctrine is laid down in *Ex parte Williams*.^e The only case in which a bishop, as visitor, has the power of deprivation, is that where he is also the founder. Here he does not possess that character, and the fact that when founder he may on visitation proceed to deprive, shews that when he has no such character he cannot claim to exercise that power. It was in the character of founder that in *Walrond v. Pallard*, the bishop had proceeded to deprivation. But even in that case the bishop was afterwards held to have exceeded his power, for actions were brought against the lessees who held leases granted by the dean, that had been deprived, and the judgment of the Court was in favour of the validity of the leases. So that it is clear that the general right now claimed by the bishop cannot be supported. But even if it could, that general right could not be appealed to in the present case, for with regard to the cathedral church of York, it has been extinguished by the composition of William de Melton. No doubt exists that the composition was duly and regularly made at the time, and that for some time it was acted on, and it put an end to some unseemly disputes between the dean and chapter, and the archbishop. But it appears that it had not been formally signed and sealed by the archbishop, and he afterwards took advantage of this irregularity to deny its validity. The fact that some bishops have had power enough to dispense with observing this composition, does not shew that it has no binding force, or that it cannot be enforced upon an appeal to the proper tribunals. Then comes the third point as to the effect of the statute of Victoria. It is clear that these proceedings are illegal under that statute. The 23d section enacts “that no criminal suit or proceeding against a clerk in holy orders, shall be instituted in any ecclesiastical Court, except as is hereinbefore provided.” This is a criminal proceeding, and the form of it is not according to the provisions of the statute. [Lord Denman, C. J.—What is your answer to the argument on the other side, that the prohibition cannot issue as the proceedings are at an end by the sentence?] The proceedings here are not at an end. The Court has merely adjourned. Before the sentence was pronounced, an application was made to the Lord Chancellor for a prohibition, which was expressly refused by his Lordship, on the ground that he could not presume that the commissary would illegally exercise his power,

^a On Ecclesiastical Law, tit. Deprivation, 302, and Visitation, 834.

^b Tit. Deprivation.

^c 4 Barn. & Cres. 313.

^a 3 Dyer, 272 b.

^b 206—209.

and proceed to deprive; and that the Court of Chancery ought not to prohibit a mere enquiry, which the visitation was, and which was clearly within the jurisdiction of the archbishop. Then came the sentence, and now this objection is raised, that after sentence a prohibition is too late. But *Gould v. Gupper*[†] distinctly settled that prohibition would lie after sentence, even where the objection did not appear on the face of the libel, but was to be collected from the whole of the proceedings in the Court below. [Mr. Justice *Patteson*.—*Poe's case* § shows that a prohibition cannot issue to a court martial after its sentence has been ratified by the king and carried into execution.] Which shews that before ratification the prohibition might have issued. Here prohibition would not lie before sentence, but that sentence being altogether wrong, the prohibition must go.

Cur. adv. vult.

Lord Denman, C. J., delivered judgment.—This was an application on the part of the dean of York for a writ of prohibition, commanding the Archbishop of York and Dr. Phillimore, his commissary, to cease from carrying into effect a sentence of deprivation from his office, and the advantages accruing therefrom, lately passed by the commissary and archbishop against the dean of York. The sentence was awarded on the grounds of contumacy and alleged simony. His lordship, after briefly stating the facts, and the questions raised in the argument, proceeded to say:—There seems no reason to doubt that there was sufficient authority vested in the archbishop to enquire into the ecclesiastical offences of every spiritual person belonging to the body of which he is the head. In its inception the visitation was perfectly legal. At first the object of the visitation was confined to the fiscal concerns relating to the fabric fund. The dean attended the meeting, and being questioned as to some money he received, conducted himself in a contumacious manner, and sentence of contempt was pronounced against him by the commissary. He then absented himself, and the proceeding went forward, and in answer to certain interrogatories which had been put to the ecclesiastical body, the Rev. Mr. Dixon, one of the canons, made a statement which was considered a direct charge of simony against the dean. The dean was then requested to attend to meet the charge. He accordingly attended, and the commissary required him in the first place to purge himself of the contempt, but that he declined to do, and said that Mr. Dixon might go on and prove the charge in his absence. Mr. Dixon did so, and the learned commissary pronounced the charge to be established in the several alleged cases, and gave judgment against the dean for that offence, as well as for the contumacy, which was that he should be deprived of the office of dean, and of all the preferments held by him in the archbishopric, and the sentence was afterwards solemnly ratified and declared by the archbishop himself. The

prohibition is claimed on various grounds, and a late act of parliament, the 2 & 3 of Vict. c. 86, for the better enforcing church discipline, has been relied upon for the purpose of shewing that the mode of proceeding adopted in this case has been irregular and illegal. That statute contains an enactment to the following effect [his Lordship read it]. But that enactment is qualified by a proviso, that nothing in the act should be construed to affect any authority over the clergy, in their respective provinces, which the archbishop or bishop might then exercise, without process of court. The 23d section of this act was quoted, which provided that no proceedings for criminal offences should be instituted, except in the manner provided by that act. The learned counsel for the dean, argued that the dean, being a clerk in holy orders, and prosecuted in a criminal proceeding for simony, a known offence against the law ecclesiastical, the proceedings should have taken place in an ecclesiastical court, and that the authority to deprive him of his office was only vested in an ecclesiastical court, and did not appertain to the visitation of an ordinary. Two arguments were raised in answer to those objections. First, that what had been done was not a criminal proceeding within the meaning of the act, the 2 & 3 Victoria; and secondly, that it was a proceeding in virtue of the authority exercised by the archbishop, according to law, over a clerk of his province, without process of Court, and thus it was excepted from the operation of the act. The learned counsel who argued against the prohibition has said that the statute refers to "causes," and therefore cannot apply to a proceeding of this kind; but the employment of that word in the short preamble affords no adequate reason for the arbitrary restriction of the act to the form of proceeding, which, in ecclesiastical law, may with technical correctness be described as a cause. The 23d section of the act provides that "no criminal suit or proceeding against a clerk in holy orders for any offence against the laws ecclesiastical, shall be instituted in any ecclesiastical Court otherwise than is hereinbefore provided." Is this, then, a proceeding of a criminal nature, or is it merely a common matter of church discipline, arising out of the visitation, and properly within the knowledge of the ordinary? The answer appears to be this, that as soon as a visitor proceeds to examine the proof of an ecclesiastical offence charged on a clerk, for the purpose of punishment by deprivation or otherwise, and more especially by the mode adopted in this case, which was at the instance of an accuser, who availed himself of the aid of an advocate, a criminal proceeding must undoubtedly be considered to have been instituted. According, therefore, to the description of suits or proceedings given in the 23d section, this proceeding should take place the way prescribed by the statute, in some ecclesiastical Court. The ordinary's visitation is said not to be an ecclesiastical Court, but to range itself under the 25th section, which saves the authority that the bishops may now

[†] 5 East. 345; 1 Smith, 528.

§ 5 Barn. & Ad. 681.

exercise personally, and without process of Court. That, then, raises the question, whether the visitor had before that statute the power to deprive the dean of his office, without process of Court. If he did possess that power, he must have derived it from the general law of the land; but we cannot adopt the assumption that he did possess it, as we cannot find any instances of its exercise, nor have there been any examples cited of such powers having been exercised over the clergy by the archbishops in their solemn visitations. We find in Comyn's Digest what are the duties of a general visitor: he may proceed *summarius simpliciter et de plano sine strepitu, aut figura judicii*." That is, according to mere law and right. But still there are some forms on which even such investigations must proceed; and the opportunity of knowing and answering the charge is absolutely necessary to make such an investigation legal. The report of the Ecclesiastical Commissioners has been referred to on both sides. It certainly is not usual for the Court to take such documents into consideration for the purpose of obtaining assistance in the construction of acts which may subsequently have been passed on the recommendation of the commissioners. In this particular instance we may, however, safely refer to the report, to see what was the state of the law at the time it was drawn up. It is a report drawn up by persons of the greatest eminence and learning, and may properly be referred to for the purpose I have mentioned. Now that report expressly states that at that time the greatest difficulty existed in punishing clergymen for many ecclesiastical offences; and it recommended in very strong terms the introduction of a new and more expeditious mode of effecting that object. Upon this part of the case it had been asked, on the part of the dean, where could have been the truth of that statement, and where the necessity of acting on that recommendation, if the archbishop possessed, as of right, the power which he had through his commissary claimed to exercise? To this question no satisfactory answer has been given; and indeed it seems to us quite plain that it was to supply the defect occasioned by this very want of power that the statute in question has been passed. But then it is said that this statute was not intended to apply to a visitatorial power, but to the ordinary proceedings in the ecclesiastical Courts. Let us see how that argument is justified by facts. Different modes of dealing with a charge of this sort may be enumerated; such as *inquisitio, accusatio, denunciatio*, where persons had come to answer the sentence passed by the ordinary in his Court. All these modes of proceeding are slow and costly; and in this stage of the argument it was asked, and the question has not been answered, why, if the ordinary possessed the power now claimed, had such expensive proceedings been resorted to, in order to bring spiritual persons to punishment? It is well known that in fact the want of the power now claimed formed one of the reasons for the employment of such modes of procedure, and also for introducing the present

law. The Court has then been pressed with the argument that the jurisdiction of a visitor has been described in comprehensive terms by the highest authorities, and the most learned commentators; and the opinion that Lord Holt gave in the case of the *Bishop of St. David's v. Lucy*,^h as to his very extensive powers, has been cited. But we must observe that that was a case in which nothing was decided but the general power of an archbishop to deprive; and that that power might be exercised in a suit regularly instituted in his metropolitanical Court against one of his suffragan bishops; and that such suit was regularly instituted, though the articles exhibited were made returnable before him at Lambeth, instead of before him in the Court of Arches. Then the case of *Philips v. Bury*,ⁱ was also referred to, with the view of shewing the great powers that may be exercised by a visitor. But with regard to this latter case it is to be observed that it was the case of a charitable foundation, and there the powers of the visitor, being the founder, are most extensive, and the rules which apply to visitors in other cases do not apply there. These cases, therefore, fail in establishing the point for which they were cited. The fact of the Court of Queen's Bench refusing to interfere with the functions of a visitor appointed by and acting as the representative of the founder, and with, and in his right, cannot be a ground for the decision of this Court in a case like the present, where the party visited takes nothing from the visitor, and cannot therefore be considered to hold his possessions subject to conditions such as a founder would have a right to impose. We do not feel that we are called on to decide whether visitations in general are to be considered as Courts, and whether complaints or charges made at visitations are to be treated as suits in Court; for we think it perfectly plain that the complaint made at the visitation now under discussion, and decided upon there, does bear the complete character of a suit or proceeding, such as could only properly be enquired of in a court. The court of the commissary here must be considered as an Ecclesiastical Court, and these proceedings under the visitation as proceedings in a Court. That being so, it is clear that from the late statute it had no jurisdiction to proceed in the manner it has done, and this Court is therefore constrained to come to the conclusion that the most reverend prelate, in so far as he has proceeded at the visitation to deprive the dean of his office, has acted entirely beyond his authority. Under these circumstances, it becomes unnecessary to enter minutely into other objections of a less extensive kind. But there is one point, of a technical nature, to which we must advert. It was argued that the sentence is final, and that there is nothing that this court can now prohibit to be done; that there is not even a continuing court to which the writ of this Court

^h 1 Ld. Raym. 447, 539.

ⁱ 1 Ld. Raym. 5; and Shower's Parl. Cases, 35, where the judgment given in the Court below was reversed.

can be addressed. That argument requires to be narrowly watched, because if carried out to the fullest extent, it may be used to give effect to unlawful proceedings, merely because they have been brought to a conclusion. But that is not the case here; for on looking at the sentence, we find that the archbishop admonished the dean not to exercise his office on pain of the greater sentence of excommunication, and the court was adjourned. It was afterwards again adjourned, and so continues at this moment. It is clear, therefore, that there is a court to which the writ of prohibition may now be addressed, and it can be addressed to the archbishop to prevent him from proceeding to the full extent indicated in the monition. The delay has not been the fault of the dean; he could not appeal before the sentence was pronounced, for the sentence of deprivation was the only thing done beyond the jurisdiction of the archbishop. Up to that point, certainly his grace had the power to inquire with a view to ulterior proceedings; and it seems that the *Lord Chancellor* discharged an application for a prohibition made before sentence pronounced, on that very ground. The clear conviction of the Court on this case is not embarrassed by the opposite judgment of the learned civilian, who acted as commissary, and who cannot be supposed to have adverted to the statute. The Court cannot but believe that it escaped his attention, occupied as it was by a great variety of circumstances, and unassisted in the view he took of his office, by advocates on both sides, who might have discussed before him the question of the extent of his jurisdiction. If we felt any doubt on the subject, we should undoubtedly call on the Dean of York to declare in prohibition; but after the long, elaborate, and matured arguments, enforced with consummate ability by counsel of the highest talents and learning, we feel that we owe it to all parties, to save delay and unnecessary expense; that we owe it to the public, and in a particular manner to the church—to encourage no doubt where we feel alone on subjects of such paramount importance, so deeply affecting its rights, its interests, and its duties. The rule for a prohibition must therefore be made absolute.

Rule absolute accordingly. *In re the Archbishop of York and Dr. Phillimore*, T. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

PAYMENT OF MONEY INTO COURT IN LIEU OF BAIL.—REFERENCE OF CAUSE AND ALL MATTERS IN DIFFERENCE.—AWARD.—APPLICATION OF MONEY.

The defendant was arrested for 1000l., which sum was deposited in Court in lieu of bail. The cause, and all matters in difference, were referred, and the arbitrator found the defendant to be indebted to the plaintiff in 666l. 2s. 10d., in respect of the cause, and in 1079l. in respect of other matters in difference. The Court, upon motion by the plaintiff, ordered the sum of 666l. 2s. 10d. to be paid out of Court to him, but refused

to make it a part of the same rule that the residue should be handed over to the defendant.

In this cause the defendant was arrested at the suit of the plaintiff for 1000l.; that sum was deposited in lieu of bail, under the 43 G. 3, c. 46, and paid into Court pursuant to 7 & 8 G. 4, c. 71. The cause, and all matters in difference, were then referred to an arbitrator, who awarded that the defendant was indebted to the plaintiff in the sum of 666l. 2s. 10d. in respect of the cause, and in 1079l. in respect of other matters in difference.

The plaintiff now sought by motion to have the sum of 666l. 2s. 10d. paid out of Court to him, being a portion of the 1000l.

Cause was shewn on behalf of the defendant. The plaintiff's motion, it was admitted, could not be refused, but it was urged that the rule should be drawn up with the additional term engrafted upon it, that the residue should be handed over to the defendant.

On behalf of the plaintiff, it was contended that the Court would not adopt this course, for that there was a large balance due to the plaintiff in respect of the matters in difference, and that the object of the defendant must be made the subject of a separate application.

Wightman, J.—I think that in strictness the term sought to be engrafted on this rule cannot be imposed, if it is objected to. That portion of the case must be the subject of a distinct application, when the plaintiff will have an opportunity of answering by affidavit the defendant's allegations. The present rule must be absolute in its terms.

Rule absolute.

Theobald in support of the motion; *Petersdorff, contra.*

Fooles v. Steinkeller, T. T. 1841. Q. B. P. C.

THE EDITOR'S LETTER BOX.

We believe that the method of communication recommended by a correspondent, in the cases of unsuccessful candidates is already adopted.

The letters of "A Constant Reader"; J. T.; "Aspiro"; J. T. C.; "A Subscriber"; "Norma," and "Ego quoque"; have been received.

We think the subject of the Horsemanship of Lawyers may be postponed for the present.

In the list of counsel attending the Chancery Courts, printed in the last number of the *Legal Observer*, it is stated that Mr. *Beithell* attends only at the Court of the Vice Chancellor of England,—we are informed, he also attends the *Lord Chancellor's Court*.

In consequence of several additions (and we trust improvements) in the *Legal Almanac*, it will not be published for some days to come.—As it is our desire to make the work in all respects useful to the profession, we have deferred it a short time to give all the new appointments.

The *Analytical Digest* of all the Cases reported in all the Courts, will be published next Saturday.

The Legal Observer.

SATURDAY, NOVEMBER 20, 1841.

——— “*Quod magis ad nos
Pertinet, et nescire malum est, agitamus.*

HORAT.

THE PUNISHMENT OF DEATH.

WE have already printed the act of last session, which reduced the punishment of death to still narrower limits than before; (see 22 L. O. 391), but we may here consider its precise effect.

By stat. 15 Geo. 2, c. 13, and 37 Geo. 3, c. 46, s. 6, officers or servants of the Bank of England, secreting or embezzling any note, bill, warrant, bond, deed, security, money or effects, entrusted with them or with the company, were guilty of felony, and punishable with death, and the same punishment was awarded by stat. 24 G. 2, c. 11, to officers and servants of the South Sea Company. By stat. 55 Geo. 3, c. 184, the privately using any stamp or die relating to any stamp duty, or fraudulently cutting off the impression of any stamp or die from any vellum, parchment or paper, with intent to use the same, was punishable with death; so, by stat. 55 Geo. 3, c. 185, was the transposing from one piece of gold or silver plate to another, or to any vessel or ware of base metal, any impression on any gold or silver plate, or exposing such gold or silver or ware of base metal, having any mark, stamp or die, with intent to defraud. By stat. 6 Geo. 4, c. 85, s. 18, returning from transportation after having been transported from St. Helena, was also liable to capital punishment.

All these offences have now ceased to be regarded as worthy of so severe a punishment, and it has accordingly been removed from crimes of a similar class; and by sect. 1 of the present act, transportation for life, or for any term not less than seven years, is substituted for the punishment of death.

By stat. 7 & 8 Geo. 4, c. 50, s. 8, the demolishing a church or chapel or erection

used in carrying on a trade, or any machinery in any factory or mine, was punishable with death. By s. 2 of the present act, the punishment is now reduced to transportation for seven years or imprisonment for three.

But by far the most important alteration made in our penal law by the present act, is with respect to the crime of rape. The punishment of this crime has varied considerably in different periods of our history. By the Saxon law it was punished with death; by William the Conqueror, with castration and loss of eyes, but in the reign of Edw. 1, the punishment was mitigated to two years' imprisonment and a fine at the king's will. In the reign of Elizabeth it again became punishable with death, and this was confirmed by stat. 9 Geo. 4, c. 31, s. 16, and continued law until the present year. The judges have, however, very rarely of late left a prisoner for execution for this offence; and by s. 3 of the present statute, the crime, whether committed on a woman or a child of ten years, is now punishable only with transportation for life.

These are all the alterations, with respect to the punishment of death, made by this statute; but by s. 4, it is enacted, that imprisonment awarded for any offence under the act, may be with or without hard labour, and solitary confinement may also be directed, whether the same be with or without hard labour, not exceeding one month at a time. This is simply carrying out the provisions of stat. 1 Vict. c. 90, ss. 3 and 5. By s. 6, none of the offences within the act are to be tried at any general or quarter sessions.

It is only further to be observed that the act came into operation on the first day of October last.

D

The crimes now punishable with death appear to be, 1. Treason. 2. Murder. 3. Unnatural offences. 4. Setting fire to any king's ship or stores. 5. Causing injury to life with intent to murder. 6. Burglary accompanied with an attempt to murder. 7. Robbery, accompanied with stabbing or wounding. 8. Setting fire to a dwelling-house, any person being therein. 9. Setting fire to, casting away, or otherwise destroying ships, with intent to murder any person. 10. Exhibiting false lights, with intent to bring ships into danger; and 11. Piracy, accompanied with stabbing &c. But of these it seems to us that the general inclination and practice appears to be rather to lean towards diminishing than increasing the number; nor do we consider the time very distant when our list of capital crimes will be reduced to the two first.

NOTES ON EQUITY.

RECEIVER'S ALLOWANCE.

A RECEIVER, though he passes his accounts and pays his balance regularly, is not entitled to make interest for his own benefit of monies which come into his hands in his character of receiver, during the intervals between the time of passing his accounts; *Shaw v. Rhodes*, 2 Russ. 539; and if he does not regularly account and pay in his balances, he is liable to be charged with interest on the money in his hands, and to be deprived of his salary. *White v. Lady Lincoln*, 8 Ves. 371; *Potts v. Leighton*, 15 Ves. 273. The allowance to a receiver appointed by the Court depends on the degree of difficulty or facility experienced in the collection. There is no general rule on the subject. When the receipts consist of rents of freehold and leasehold estates, 5l. per cent. upon the amount received is frequently allowed. If there be any special difficulty in collecting the rents on account of the sums being extremely small, or of the payments being very frequent, or weekly payments, then the allowance is increased; on the other hand, if there should be very great facility in receiving the rents, then less than 5l. per cent. is allowed. It may be increased if there be any extraordinary difficulty, or diminished if there be any extraordinary facility in the collection. *Per Lord Langdale, M. R., Day v. Croft*, 2 Beav. 492.

SERVANT OF LUNATIC.

On a reference to the Master, it appeared among other things, that John Wright had lived with the lunatic, as his personal ser-

vant from the year 1817, down to the month of June, 1840, but his age and infirmities having rendered him incapable of giving that attention to the lunatic which his malady required, it was considered necessary that he should retire from the lunatic's service, and that his place should be taken by a more active person. The Master, among other things, reported that an allowance of 60l. per annum should be made to John Wright. The next of kin consenting, the Lord Chancellor said he thought the proposal as to the old servant very reasonable, but asked whether there was any precedent for it. On a subsequent day, Mr. Sidebottom stated that no precedent could be found, but that he was instructed to say, on behalf of the Committee, that they were satisfied that the allowance was one which the lunatic, if he should ever recover, would approve, and the Lord Chancellor made the order. *In re Carysfort*, 1 Cr. & Ph. 76.

LONG ANNUITIES.

Where a testator, possessing long annuities and money in different funds, bequeathed the residue of his estate to A. for life, and after her death, he gave certain stock legacies, and whatever might remain, to B., it was held that the long annuities ought to be converted for the benefit of the parties in remainder. The general rule on the subject was thus laid down by Lord Langdale, M. R.—Where a testator has given an estate, or the residue of an estate, to persons in succession, as to one for life, with remainder to another person; the Court presuming that the testator intended the remainder-man should have something, will so deal with the property, if it be a property that is wearing out and may terminate during the life estate, so as to secure the accomplishment of that intention, and give the remainder man something; for that purpose it will convert the perishable into a permanent property, and give the income which arises from it to the person entitled for life in succession, and preserve the capital for the person entitled in remainder. "But if, upon the construction of the will, it appears the testator had another intention, that is to say, an intention to give to one or more persons who are to take for lives, or during a succession of lives, the enjoyment of the property, in the state he left it at the time of his death, then the Court will carry that intention into effect." *Lichfield v. Baker*, 2 Beav. 487; and see as to this, *Mills v. Mills*, 7 Sim. 501; *Bathune v. Kennedy*, 1 Myl. & C. 114; *Vincent v. Newcombe*, 1 You. 599.

THE DOCTRINE OF ACQUIESCENCE.

THE rule that "silence gives consent," is a strictly equitable doctrine. If a person have a right or interest, and he choose not to enforce it for a considerable time, the presumption will arise that he has either waived it, or has consented to be deprived of its enjoyment; and this doctrine is one of very extensive application.

In *Jones v. The Royal Canal Company*,^a Lord *Manners*, J. C., held that it was the duty of a party seeing a nuisance in progress to give notice to the party erecting the nuisance, of his intention to object; and, in two cases, a Court of Equity has gone to the extent of holding that such an omission would give the adverse party an equity to prevent the party concealing his right, or apparently acquiescing in the nuisance, from asserting his title at law to compensation for the nuisance when effected. This was done in the case of *The Watercourse*,^b and that of *Short v. Taylor*,^c where injunctions were granted to restrain actions for nuisances, because the plaintiff at law had encouraged them. It is a still stronger case where one party has suffered another to expend money on property, in which case the party having the legal right will be restrained from its exercise;^d and although this has usually happened where there was some privity between the parties, as for instance, that of landlord and tenant, or principal and agent, yet it is conceived the principle is not confined to such cases.

In a recent case,^e this doctrine has been acted on with respect to a nuisance, and Lord *Cottenham*, C., has laid it down, that a party may so encourage another in the erection of a nuisance as to give the adverse party an equity to restrain him from recovering damages at law for such nuisance when completed.

"It was there alleged that there was sufficient in what the bill stated to have been the conduct of Lord *Jersey* with respect to these works, to preclude him from the right of treating them as a nuisance. The allegation in the bill was, that whilst the erection of these works was in progress, he was aware of it, and that he encouraged it. Of course it must be assumed, on a demurrer, that what the bill alleged was true, and the only question was, whether, if the facts were

established as they were alleged, a case existed in which the plaintiff was entitled to the interposition which he prayed."

His Lordship reviewed the authorities and thus continued. "That being the state of the authorities, if I were to allow this demurrer, I should of course be understood as saying, and I should in fact be saying, that no case was stated on this bill which, if proved, would entitle the plaintiff to the interposition of the Court. There is no fact before me to call for any opinion as to what degree of encouragement or what circumstances leading to encouragement, would be sufficient for that purpose. But I think it quite clear that there is in this bill sufficient allegation to make it competent for the plaintiff to give such evidence as would operate in raising an equity against the title asserted by a party claiming compensation at law for a nuisance.

NEW ORDER IN CHANCERY RELATING TO DISTRINGAS ON STOCK.

Wednesday, the 17th day of Nov. 1841.

"THE Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls; the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England; the Honourable the Vice Chancellor James Lewis Knight Bruce, and the Honourable the Vice Chancellor James Wigram, and in pursuance of an act passed in the fifth year of the reign of her present Majesty, intituled 'An Act to make further provisions for the Administration of Justice,' doth hereby order and direct in manner following, that is to say—

"1. That any person or persons claiming to be interested in any stock transferable at the Bank of England, standing in the name or names of any other person or persons, or body politic or corporate, in the books of the Governor and Company of the Bank of England, may, by his or their solicitor, prepare a writ of *distringas*, pursuant to the said act, in the form set out in the first schedule to the said act, and may present the same for sealing at the subpoena office.

"2. That upon the presentment of such writ for sealing, and on leaving with the patentee of the subpoena office an affidavit,

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^a 2 Molloy, 319.

^b 2 Eq. Ca. Ab. 522.

^c *Ibid.*

^d *Lord Casador v. Lewis*, 1 Yo. & Col. 427.

^e *Wigham v. Earl of Jersey*, 1 Cr. & Ph. 91.

duly sworn by the person or one of the persons applying for such writ, or his solicitor, before one of the Masters or Masters Extraordinary of this Court, in the form set out at the foot of these orders, the same writ shall (in conformity with the orders of this court for issuing and sealing writs of subpoena) be forthwith sealed with the seal of the subpoena office, and such writ, when sealed, shall have the same force and validity as the writ of *distringas* heretofore issued out of the Court of Exchequer.

"3. That such writ of *distringas*, and all process thereunder, may at any time be discharged by the order of this court, to be obtained, as of course, upon the petition of the party on whose behalf the writ was issued, and to be obtained upon the application by motion or notice, or by petition duly served, of any other person claiming to be interested in the stock sought to be affected by such writ. And that upon or after such application, such costs thereof, and in relation thereto, and to the said writ, as to this court shall seem just, may, if this court shall think fit, be awarded and ordered to be paid by the person or persons who obtained such *distringas*, or upon an application by any other person or persons, by such person or persons.

"4. That the governor and company of the Bank of England having been served with such writ of *distringas*, and a notice not to permit the transfer of the stock in such notice, and in the said affidavit specified, or not to pay the dividends thereon, and having afterwards received a request from the party or parties in whose name or names such stock shall be standing, or some person on his or their behalf, or representing him or them, to allow such transfer, or to pay such dividends, shall not by force, or in consequence of such *distringas*, be authorised without the order of this court to refuse to permit such transfer to be made, or to withhold payment of such dividends for more than eight days after the date of such request.

"5. That upon leaving such affidavit, as aforesaid, with the patentee of the subpoena office, there shall be paid to such patentee the sum of one shilling for filing such affidavit. And that within twenty-four hours from the time when such affidavit shall be so left, the said patentee shall pay the said sum of one shilling to the clerk of the affidavit, and cause such affidavit to be filed and registered at the office of such clerk.

"6. That upon the sealing of such writ of *distringas* the sum of five shillings and sixpence shall be paid to the patentee of the subpoena office, and that out of such

sum the said patentee shall pay the sum of four shillings to the Accountant General, to be by him placed to the credit of the account entitled 'The Suitors' Fee Fund Account.'

"7. That for and in respect of the preparation and service of such writ of *distringas*, and the *præcipe* and attendance in respect thereof, such costs shall be allowed as by the rules and practice of this court are allowed for the preparation and service and attendance in respect of a writ of subpoena to answer a bill.

"FORM OF AFFIDAVIT.

"Y. Z. (the name of the party on whose behalf the writ is sued out) v. The Governor and Company of the Bank of England.

"I, A. B., of , do solemnly swear that, according to the best of my knowledge, information, and belief, I am (or if the affidavit is made by the solicitor, C. D., of is) *bond fide* and beneficially interested in the stock hereinafter particularly described; that is to say [here specify the amount of the stock to be affected by the writ, and the name or names of the person or persons, or body politic or corporate, in whose name or names the same shall be standing]. And that I have reason to believe, and do believe, that there is danger of such stock being dealt with in a manner prejudicial to my interest [or to the interest of the said C. D., (as the case may be)].

(Signed)

"LYNDHURST, C.
LANGDALE, M.R.
LANCELOT SHADWELL, V.C.
J. L. KNIGHT BRUCE, V.C.
JAMES WIGRAM, V.C."

These Orders will materially facilitate the practice of restraining the transfer of stock, by enabling the solicitor to issue the *distringas* himself, without the delay which would be occasioned by its being prepared in the Six Clerks' Office. A single day is on many occasions of the greatest importance.

THE orders of the 11th instant for the distribution of the judicial business of the Courts, which were printed in our last Number, were examined with an office copy of the original Orders. Another publication, said to be "authorised," contains several inaccuracies. They are, however, of a verbal nature, and not of much consequence.

We have heard of some claim on the part of an officer of the Court to a *copyright* in the General Orders issued by the Judges, as if such Orders were private property, but, on reconsideration, we have no doubt that the officer will perceive that as these Orders are intended to affect the rights and interests of the suitors and practitioners of the Court, and *are, or ought to be, promulgated in open Court*, without which neither practitioner or suitor could be "affected with notice," it is impossible there can be any exclusive right to print them.

In the Common Law Courts, when a new rule is made, it is read by the proper officer in all the Courts, and immediately appears, as well in the newspapers as the legal periodicals, amongst the other decisions and proceedings of the Courts. It surely cannot be maintained that the Judges of the Courts of Equity may make a written order and deliver it privately to one of the officers of the Court with authority to print it in any manner, and publish it at any time, and at any price that he pleases; and that such is to be the only mode of communicating to the public and the profession those Rules and Orders of the Court by which the suitors and practitioners are to be bound. We conceive that we shall but properly discharge our duty in continuing to communicate to our readers the earliest intelligence on all matters of Law and Practice, and we have no doubt that if the matter should be brought before any of the Judges who preside over the Courts of Chancery, they will approve of our making known their Orders, without the due promulgation of which, it is manifest that the business of the Courts will frequently be impeded.

QUESTIONS AT THE EXAMINATION, Michaelmas Term, 1841.

PRELIMINARY.

Where, and with whom, did you serve your clerkship?

State the particular branch or branches of the law to which you have principally applied yourself during your clerkship?

Mention some of the principal law books you have read and studied.

COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

Notice to Quit.

What notice to quit should be given to a tenant who holds under a yearly tenancy? May it be given at any time of the year? or must it have reference to any, and what particular period?

Ejectment.

If a tenant be served with an ejectment, and his landlord wish to defend, is he allowed to do so; and if so, how does he obtain leave to do it?

Chose in Action.

Describe the nature of a chose in action.

Bond.

If *A.* give a bond to *B.* for 100*l.*, and *B.* assign the bond to *C.* and *C.* bring an action to recover the amount, in whose name should the action be brought?

Form of Action.

Suppose *A.* indebted to *B.* 100*l.* for goods sold and delivered, in what form or forms of action can *B.* recover the debt?

Pleading.

Suppose a party has four days' time to plead given to him by a judge's order, dated on Monday, November 1; when must he plead, so as to prevent judgment being signed against him by default?

Evidence.

Will a deed ever, and when, prove itself, without calling the attesting witnesses?

Trials.

Are the Superior Courts, or a Judge of such Courts, authorized in any, and what cases, to direct a cause to be tried before a sheriff? Is there any, and what, difference in the mode of trial of issues in law and issues in fact? and how are such respective issues tried?

If a plaintiff make default in proceeding to the trial of, his cause, is there any, and what, course by which a defendant can bring the cause on to trial?

Nisi Prius.

What is the derivation and meaning of the term "*nisi prius*," as applied to the Courts holden for the trial of causes in the Superior Courts of Westminster Hall?

Bill of Exchange.

Where a defendant, in an action brought against him as acceptor of a bill of exchange, suffers judgment by default; how should the plaintiff proceed to ascertain the amount due to him? Is there one mode of proceeding only, or more than

one? and if more than one, which is the most usual mode?

Costs.

If a cause be tried by a special jury obtained by the plaintiff, and he succeed in getting a verdict, and the Judge omit to certify that it was a proper cause to be so tried; on whom will the costs of the special jury fall?

Suppose a trial had, and a rule for a new trial afterwards made absolute, and such rule to be silent as to costs; what is the result as to the costs of the trial already had?

Suppose a juror be withdrawn on the trial of a cause, what is the result as to the costs of the trial?

CONVEYANCING.

Estates.

Where it is proposed to convey an estate by lease and release, can the lease be dispensed with under any, and what, circumstances; and under what authority?

What is a legal, and what is an equitable estate? and give an instance.

Where an estate is limited to *A.* for life, with power to grant leases for twenty-one years, and *A.* conveys all his estate, right, and interest to *B.*? can *B.* execute the power, or grant a lease for any, and what, term of years?

A., on his marriage, limited a freehold estate to the use of himself for life, with remainder to the use of his first and other sons successively in tail, with remainder to the use of *B.* in fee. Are either, and which, of the above remainders vested or contingent?

How may dower be barred or prevented?

What is the nature of an equity of redemption, and how can it be destroyed?

What is an estate in joint tenancy, and how may such estate be severed?

What is a tenancy by the curtesy of England?

What are the proper words for creating an estate tail by deed?

Mortgages.

A mortgagee in fee dies intestate? in whom do the estate and money vest?

What is the effect of cancelling or destroying a mortgage deed on payment of principal and interest?

Lease.

At the expiration of a lease for a year, is any, and what notice required?

Trust.

On payment of purchase money to trustees, what is to be attended to on the part of the purchaser?

Executor.

The assignee of a term appointed *A.* executor, who died intestate; *C.* took out administration to *A.*, and died, appointing *D.* executor. Who is the proper party to assign the term?

Descent.

What is a succession *per stirpes*, and what *per capita*?

EQUITY, AND PRACTICE OF THE COURTS.

Principles of Equity.

Where an injury to property is apprehended, will a Court of Equity assist? and how? and for what injuries will the Court apply a remedy?

If a loss to an estate occur by a breach of trust on the part of an executor or trustee, and a profit arise to the same estate by any other act on the part of the executor, contrary to the trusts of the will or deed; is the executor in the first instance liable; and, in the latter case, can he set off any gains to the estate from any losses that have occurred by his breach of trust?

If a trustee or agent purchase an estate which he is employed to sell, will a Court of Equity protect the sale? and give a reason for your answer.

What is necessary to be done in order to obtain from another an account of monies come to his hands as executor, trustee, or agent?

In the case of a receiver being appointed of a real estate, to what amount is he required to give sureties for the due performance of his duty?

After such receiver has received the rents and paid all outgoing, what is his duty with respect to the balance in his hands?

If a party interested in a fund in Court assign it to another as a security for a debt, what is the course to be pursued to make his security available?

What is necessary to be done to make an infant a ward of Court, and in what cases will the Court allow maintenance for an infant?

Practice.

What authority ought to be taken by a solicitor from his client, for the prosecution or defence of a suit in Chancery?

In what case may a subpoena be issued and served before the bill is on the file?

What time is allowed to a defendant to appear, after he has been served with a subpoena?

What time is given to a defendant, after appearance, for answering, and what for demurring to a bill.

In what cases will the Court of Chancery grant a writ of *ne exeat regno*?

Does the marriage of a female defendant abate a suit?

Who is liable for costs incurred by an infant plaintiff?

BANKRUPTCY AND PRACTICE OF THE COURTS.

Fiat.

What is the course of proceeding in issuing and prosecuting a fiat in bankruptcy?

Is it essential to the validity of a fiat, that the petitioning creditor's debt should be due and payable at the time of the act of bankruptcy?

Act of bankruptcy.

State the most usual acts of bankruptcy?

Evidence.

Are all persons competent as witnesses to prove the constituent parts of the bankruptcy? if not, what objections render a person incompetent?

By what evidence must a promise be proved, to be available, made by a bankrupt after the allowance of his certificate, to pay a debt which has been barred thereby?

What is necessary to render a bankrupt competent as a witness, and are there any, and what matters, which he is under no circumstances competent to prove or disprove?

Costs.

Are the assignees under any, and what circumstances, liable to pay the solicitor's bill for obtaining and prosecuting the fiat up to the choice of assignees?

Liability and rights of bankrupt.

Can a bankrupt be apprehended before the expiration of the forty-two days when he has not surrendered? and if so, under what circumstances, and what is the proper course to be taken to procure his apprehension?

What is the course of proceeding on behalf of an individual improperly declared bankrupt, to obtain a supersedeas of the fiat?

State if there is any case where the bankrupt's certificate is not void, but is no bar to a creditor who has not proved his debt in enforcing the payment of it.

Bankrupt's property.

Suppose the bankrupt to have carried on the business of a factor, and to have in his possession at the time of the bankruptcy, stock placed in his hands for sale, have the assignees any rights in respect of such property?

Suppose a bill of exchange, or other effects, to be placed in the bankrupt's hands for

a special purpose, to be found in his possession at the time of the bankruptcy, have the assignees any rights in respect of such property?

Disputing Bankruptcy.

In what cases is it expedient to give a notice of an intention to dispute the constituent parts of the bankruptcy?

Is the effect of giving the notice the same in all actions, or what is the principle regulating the effect of the notice in different actions?

Petitions.

What are the rules of practice in regard to the signature and attestation of petitions to the Court of Bankruptcy?

CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

Nature of Offences.

State the distinction between *murder* and *manslaughter*?

What constitutes the offence of *burglary*?

Is the offence of burglary in any case punishable with death? If so, state under what circumstances it is so punishable.

What constitutes the offence of *larceny*; and what is the difference, if any, between grand and petty larceny?

When a banker, broker, attorney, or agent, entrusted with Exchequer bills or other securities for safe custody, violates the trust, and applies the property to his own use, can he be prosecuted criminally; and if so, what is the punishment?

What is the meaning of the term "*Theft Bote*"?

What is perjury, and the punishment of a person convicted of it?

What is subornation of *perjury*, and the punishment for a person convicted of it?

What constitutes a *libel*?

Can a libeller be prosecuted criminally as well as civilly; and if so, does the truth of a libel form a good defence to the prosecution?

Criminal Proceedings.

State some of the ordinary cases within the jurisdiction of the Quarter Sessions?

How many justices of the peace must be present to hold a Court of Quarter Sessions?

Can any, and if any, which of the decisions at Quarter Sessions be reviewed or appealed from, and in what manner?

Before what court must a murder committed at sea be tried?

What is a *nuisance*, and how redressed? and is the remedy the same for all nuisances?

AMENDMENT OF THE LAW OF ATTORNEYS.

ADMISSION ON THE ROLL.

To the Editor of the Legal Observer.

Sir,

I AM much pleased with the suggestions as to the "present cumbrous and inconvenient regulations on the admission of attorneys and solicitors in the several Courts," contained in the letter signed "An Attorney," in your last volume (p. 457), and should be glad to see those regulations simplified, and the trouble consequent on gaining admission very much diminished.

I cannot at all divine the reason why attorneys should be admitted at Westminster term, and solicitors at the Rolls Chapel in vacation. Why might they not be admitted both in common law and equity at Westminster, at the same time? and even in bankruptcy too?

The time intervening between the earliest period in which one can be admitted in common law and in equity, is absolutely lost in many cases; and in others, where the party has pressing matters at a distance requiring personal attention, perhaps a special journey to town may be rendered necessary by the delay.

But there is another grievance I would respectfully submit to your notice, namely, the number of oaths necessary to be taken to procure admission in all the Courts; in my case, I think they amounted to twelve or thirteen, including the affidavits of execution of articles and assignment. The suggestion of "An Attorney" as to this head, if I read him correctly, would dispense with the necessity of the oaths of allegiance and supremacy, and for proper demeanour on the Chancery admission if the party be admitted in common law, or *vice versa*, and also the oath required to be taken preparatory to admission in bankruptcy, that the party is an attorney. It appears to me, also, that the principle of the recent enactment substituting declarations in lieu of oaths, might be judiciously extended to the following cases, namely, the execution of articles, entering notices, due service under articles, payment of stamp duty, &c., particularly as the punishment of perjury attaches to every wilful infraction of that enactment. And if the morals of the profession were at such a low ebb that neither the discredit attending a wilfully false declaration, nor the penal consequences of perjury, would suffice to bind down their slippery consciences, I am fearful that even perjury itself would be resorted to with impunity, whenever that would gain the desired end. And as it is on all hands allowed that the frequent repetition of any action, has a tendency to remove reflection on the doing of it,—that the frequent commission of crime renders the heart callous and hardened, and blunts the sensibilities of the mind; so the too frequent taking of oaths tends to the removal of that sanctity from the act which ought ever

to accompany it, and which, in fact, forms the only ground on which an oath can be justified, and on which its power over the conscience can be fully exercised

ANOTHER ATTORNEY.

RESTRICTION IN TAKING ARTICLED CLERKS.

Sir,

On looking over this bill, I find by clause 4, "that from and after the passing of this act, no attorney or solicitor shall be capable of taking a clerk to be bound by such contract as aforesaid (see clause 3), unless such attorney or solicitor shall have been admitted, and shall have practised as an attorney or solicitor for five years previously to the date and execution of such contract." Suppose *A.* to have been admitted last Trinity Term, and to take out his certificate on the 15th of next month; also, suppose *B.* to have been in practice for four years, ending on the passing of the act, and to have an application made him to take a clerk. Now, Sir, what I wish to know is this: Is the proposed act as well *retrospective* as *prospective*, in its operation, so as to prevent both *A.* and *B.* from taking a clerk till they respectively shall have been in practice for five years, or not? If it is as well the one as the other, I think, under the head of "exceptions to the act," a clause applicable to such cases as the above ought to be introduced, or in other words, the act should be *prospective* only.

D. E. J.

Sir,

The reason you have given "Spes," p. 491, of your last volume, in favour of the proposed alteration with respect to attorneys taking articled clerks, would certainly hold good in the case of a young attorney, starting, as it were, on his own bottom, and having to *create* a business, *i. e.* opening an office, painting his name on the door "*A. B., solicitor, &c.*" and attending daily at his office in hopes that a client may appear. But is this the general case with young attorneys? For their own sake it is to be hoped not. Do not the majority, at the commencement of their professional career, either enter as junior partners into established houses, or start as successors to gentlemen who have made an opening for them, by death, by retirement, or from any other cause? Now to either of these cases I think your *reason* will be found inapplicable—for in the former, the clerk, though articled to the junior partner, would have the advantage of seeing and attending to the whole business of the firm; and in the latter, I do not presume but that he would have a fair opportunity "of acquiring by actual experience, a due knowledge of his profession;" it may be urged, and truly, that this depends upon what sort of practice is bequeathed to the young attorney by his predecessor; but this applies equally to all other cases—a young man's opportunities must, in some measure be regulated by the extent of practice of the attorney to whom he is articled.

R. W. S.

Sir,
I was sorry to see in your Number of the 16th October, a letter signed "Spes" on this subject. Not that I blame you for its insertion, for the nature of your work sufficiently justifies you, but I regret the mode of reasoning which your correspondent has adopted. With him it is a foregone conclusion, that the premiums paid with articled clerks should be looked upon as a source of income,—that the admission as an attorney should bestow *instantly* the right to obtain such premiums,—that no consideration should be had of the large, small, or no practice of the professional man,—thus leaving utterly out of the question the most important features in it, viz., the power and means competently to educate his clerk, as well as the heavy moral responsibility the position imposes, "Surely every man is worthy of his hire," says he, "in whatever grade of life he may be; and if you will not reward him honorably, he is obliged of necessity to resort to less scrupulous means." No doubt, every man should be remunerated according to his desert, and I have no doubt, either, that the professional man is very frequently paid considerably below his desert. No one would be more glad to see this state of things amended than myself; but it should be effected in a spirit far different from that which appears to actuate "Spes." The lawyer who honestly discharges his professional duties, deserves well of the community. He has, in earlier years, devoted his time, talents and energies, to the accumulation of adequate knowledge, and the obtainment of proper moral qualifications. He has, or his friends have for him, spent considerable sums during this training, and he has certainly a right to expect that his exertions on behalf of his clients should not pass unremunerated. But mental labour is difficult of appreciation, and very many clients are the worst possible judges of its value. They cannot be entrusted to fix the scale, nor should the professional man alone be the arbiter. The heads of the profession are the proper parties to put the matter on as just a footing as human wisdom, aided by peculiar practical knowledge, will allow; and from them I hope the change so desirable, and so much needed, will ere long come. A solicitor should never be possessed with the greed of gain. The arrangements of society render it necessary that services should be requited by pecuniary means; but this recompense should ever be looked upon as subordinate to the nobler one, of having conscientiously fulfilled important and anxious duties. I consider the provision (so condemned by "Spes,") intended to be inserted in the proposed new law, as wise and proper; not that five years will always bring sufficient practice, or any period confer in some, though I hope, rare cases, those other qualifications, so necessary for the legal instructor; but the limit named appears reasonable, and, perhaps, in fixing it, we have all that can be expected, in this particular instance, from human foresight and precaution.

It may be said that I write as a visionary—as one unacquainted with the inducements and motives which generally guide human nature, and that my remarks are more specious than true. I hope not. I believe there are many of my brethren who are actuated by the noblest motives; and I feel sure, that unless a high tone of moral feeling prevailed the profession, it would cease to hold the rank it does in the estimation of the best portion of the public; and I aver, that the more exalted the rule of action which the young aspirant to professional success places before him, the more worthy will he become, the more strenuously and exactly will he fulfil his duties, the more certainly will he rise superior to, and scorn all base and sordid influences. Worth, knowledge, and perseverance, cannot be concealed; and though he may not under the present system, realize a splendid fortune, yet, inadequate as his recompense is to his merit, a competence may still be secured, and the enjoyment of this in the autumn of life, enhanced by the serene satisfaction which the recollection of years honourably spent affords, will smooth and brighten his latter days, and bring those grateful accompaniments which old age should ever have, and deserve:—

"Honour, love, obedience, troops of friends."

SPERO MELIORA.

PROVISIONAL ASSIGNEES.

The statute 1 & 2 W. 4, c. 56, enacts, in the 25th section, "that when any person hath been adjudged a bankrupt, all his personal estate and effects, present and future, which by the laws now in force, may be assigned by commissioners acting in the execution of a commission against such bankrupt, shall become absolutely vested in, and transferred to the *assignees or assignee for the time being, by virtue of their appointment*, without any deed of assignment for that purpose, &c." This seems to me to provide for every kind of assignee; but according to Sir John Cross, in a recent case before the Court of Review, the language of the section is not sufficient to include a provisional assignee. Surely he is an *assignee for the time being*. This was certainly a mere *obiter dictum* on the part of the learned judge of the Court of Review; and the point was not discussed at the bar; but the statement that it had often struck him (the learned judge) as a *casus omissus* in the act of parliament, entitles it to some consideration; for if his view of the section be correct, it will be necessary, on the appointment of a provisional assignee, that the estate and effects of the bankrupt should be conveyed and assigned to him by deed in the same manner as before the act passed.

This point is one of importance to those members of the profession who are concerned in country bankruptcies.

W. M.

OBSERVATIONS ON THE NEW ORDERS
IN CHANCERY OF 26 AUGUST.

SOLICITOR'S BOOK.

We have received a well-written pamphlet, called "A few Observations on the New Chancery Orders, submitted to the Right Honourable Lord Lyndhurst," and it may be useful to extract the writer's remarks relating to the *Solicitor's Book*.

By the first Order, every solicitor and agent, before practising in Court, shall enter his name, &c., in this book, "in alphabetical order." But how is this to be done? They will not all arrive at the office in alphabetical order. Mr. B. arrives before Mr. A., how then are they to enter their names in alphabetical order? Suppose, however, that there should be a column or page appropriated to each letter, (which would require rather long ones, by the bye), still Mr. *Abraham* may arrive before Mr. *Auron*, and this would not strictly be in alphabetical order. Perhaps it may be intended that the names shall, in the first instance, be entered in a book promiscuously, and afterwards arranged. But—besides that the order contains no such provision—who is the person to arrange them, and how long is he to wait, or when is he to presume that all are entered that will be entered, in order that he may commence operation? Again,—the order requires that every such solicitor and agent, on changing his place of business, &c., "shall cause a like entry therefore to be made in the Solicitor's book." In what manner, and in what form of words, and in what part of the "book," is this entry of change of place of business to appear? And how would the "alphabetical order" be preserved in such case—even assuming that it could ever be acquired? The requisition of the Order, moreover, is, "that every Solicitor, before he practise in this Court, *in his own name solely*," shall enter his name, &c. What then is to be done in the case of *partnership*? Is the name of *each partner*, or the name of the *firm*, or *both*, to be entered?

Again,—is it intended that all "writs, notices, orders, warrants, rules, and other documents, proceedings, and written communications," shall be served within the limits prescribed by the Order, viz., in London, Westminster, or the borough of Southwark, or within two miles of Lincoln's Inn Hall? If this be so, (and it certainly seems to be the scope of it), a country solicitor could not undertake to accept a subpoena for his client. Many solicitors, too, without the prescribed limits, sometimes practise in Court in their own names, and sometimes in the name of an agent; and most business generally proceeds to a certain extent in the hands of country solicitors, before it gets into the hands of agents at all. Indeed the 5th Order expressly prohibits all persons from seeking justice in

the Court, (rather a strong measure, by the bye), till "the name of his solicitor, and his solicitor's agent," be entered in the aforesaid book. Now as it is not probable that any solicitor would leave matters in doubt, or place his clients under the necessity of seeing to this in each instance, he would take care to have his name entered at once. This applies to every Solicitor in England, and possibly to some out of England too. The book, therefore, must provide for *all* in some way or other; but whether in the same alphabetical list as those within the prescribed limits, does not appear. If "a great book is a great evil," (and if ever the adage applied, it will surely apply here), we should have little difficulty in designating this book an evil, even if there were no other cause of evil in it. But when it comes to be well considered, touching the several points before noticed (and more of a similar nature which will no doubt occur to others) we shall have still less difficulty in pronouncing this to be a scheme calculated to introduce much more difficulty, expense, delay, and confusion than will be removed thereby. Neither should the 3rd Order pass unnoticed, which provides for the fixing up of notices, &c., if the required entry is not to be met with in the aforesaid book; in which case every "such writ, notice, order, warrant, rule, or other document" (copy of a bill of 500 folios, perhaps, under the 23rd Order—of which a word by and bye), "proceeding, or written communication" is to be *fixed up* "in the said Six Clerks' office." In what room or part of the office, or whether up stairs or down, or how the aforesaid *fixing* (or rather, in the instance just suggested, perhaps the *nailing* or *screwing*) is to be effected; or how long the document is to remain there; and whether the said "fixing" is to go on, though the required entry may be made in the mean time; or how often search is to be made for such entry;—these, and many other things of a like nature, are, it is to be feared, left wholly unprovided for.

Again,—at present all such notices, &c., are generally served on the Clerks in Court. Is such service in future to be of no avail? or is such mode of service still to be continued to any, and what extent, notwithstanding all this new contrivance for facilitating service?

After all, what is the evil which all this proposed new machinery is intended to remedy? Has the difficulty of serving parties, their solicitors or agents, ever been adduced as one of the causes of delay and expense? It ought not only to be adduced, but proved, before such doubtful means as these are resorted to in order to provide a remedy.

We have not heard that the Orders of the 26th August (see our last volume, p. 271) have yet been suspended; though from several persons, likely to be well-informed, we are told that such will be the case, at least with respect to a considerable part of the orders. Ed.

SUPERIOR COURTS.

Vice Chancellor's Court.

MORTGAGE.—COMPOUND INTEREST.

A mortgagee who obtains a decree for sale and payment of his mortgage debt and interest, is entitled to compound interest from the confirmation of the Master's report, finding the amount due to him; but not if he has filed the bill on behalf of himself and all other the specialty creditors of the mortgagor.

The testator in the pleadings named, who died in 1839, having executed a mortgage for 1600*l.* on certain copyhold and leasehold property, in favour of the plaintiff, the latter, shortly after his death instituted the present suit on behalf of himself and all other the specialty creditors of the testator, for the purpose of obtaining a sale of the mortgaged property, and a settlement of his claim. On the hearing of the cause the usual decree was pronounced for taking the accounts of the testator's estate, and of the plaintiff's mortgage debt, interest and costs, and for a sale of the property mortgaged, in pursuance of which a sale had taken place, and the produce had been carried over to separate accounts in respect of the copyhold and leasehold portions of the property, but there being no other specialty creditor of the testator, and the property having produced more than sufficient to satisfy the plaintiff's demand, the other accounts were, at the instance of the parties interested, waived. The cause having now come on for further directions,

S. Miller, for the plaintiff, submitted that the suit having been instituted for a sale of the mortgaged property, the plaintiff was entitled to compound interest in respect of the sum found due by the Master from the time his report was confirmed, and cited *Wharton v. Craddock*, 1 Keen, 269.

J. Parker, for the defendants, contended that it was not now usual to allow interest upon interest in taking a mortgagee's account.

The Vice Chancellor admitted the distinction between a sale and foreclosure, and stated that under a decree for the former, the plaintiff was entitled to compound interest; but as the plaintiff in this case sued as a specialty creditor, he thought it ought not to be allowed.

Stranger v. Morley, July 17th, 1841.

Rolls.

TRUSTEES.—CONSTRUCTION OF THE 1 W. 4, c. 6

The Court will not, on a summary application, appoint new Trustees of a Charity under the 1 W. 4, c. 60, s. 21, but will refer it to the master to approve of proper persons to be such trustees, and will act upon his report.

By the will of the testator in this cause, five trustees were directed to be nominated for the purpose of conducting the affairs of the charity in the pleadings mentioned, who were to be selected by the chiefest inhabitants of the place

where the charity was situate. In the year 1822, five trustees were elected at a vestry meeting, whose choice was approved by the master to whom the cause was referred, as appeared by his report, dated in that year. The five trustees so elected took upon themselves the execution of the trusts of the will; but three of them having died, and one of the remaining two being aged and infirm and being desirous of being discharged from further interference in the management of the charity, a petition had been presented under the above act, praying that certain other persons named in the petition should be appointed the trustees.

Nente for the petitioner; *Wray* for the Attorney General.

The Master of the Rolls, said, the order could not be made without a reference to the master for him to approve of the persons proposed to be appointed the new trustees, and his Lordship made an order for such reference accordingly.

In the matter of *Whitney's Charity*, November 3rd, 1841.

PRACTICE.—STOP ORDER.—CONSTRUCTION OF THE NEW ORDER OF APRIL, 1841

Where an assignment had been made several years ago, of a share of certain funds in Court, and the assignees had neglected to obtain a stop order: Held, that a subsequent assignee of the same share, could not obtain such an order upon petition, without the appearance of the party to whom the share originally belonged.

In this case one of the parties to the cause, named Jones, had assigned a share of certain funds belonging to him, standing to the credit of the cause to a person named Forman, who subsequently died, and his administratrix assigned all her intestate's interests to the petitioner. Affidavits were read, proving the two assignments, but the petitioner being unable to ascertain whether Jones was living or dead,

Marshall for the petitioner, submitted that power being given by the assignment executed by Jones to apply to the Court in any manner that the assignee might be advised. It was sufficient under the order of April last, to prove the execution of the assignments.

The Master of the Rolls said that it was absolutely necessary for Jones, whose interest was sought to be affected, to appear upon the petition; and in the event of his being dead, his personal representative, unless it could be satisfactorily shewn that he had no representative.

Dudfield v. Davis, Nov. 3, 1841.

Queen's Bench.

[Before the four Judges.]

AGENT.—INTOXICATION.

If a party employs a tipsy man to do a particular work, he becomes responsible for the way in which that man performs the work.

Case for negligence of the defendant's servants. Plea, Not Guilty. On the evening of

the 14th of December the plaintiff was returning through Barnett in his gig, accompanied by his wife, when his horse stumbled over a truck that had been left on the side of the road by the defendant's servant. At the trial of the cause before Lord Denman, C. J., at the Westminster sittings after last term, it appeared that the defendant was a corn chandler, carrying on business at Barnett; that on the night in question he was absent from home, and his business was managed (as was usual when he was casually absent) by his sister. She received an order for some oats from a customer, who lived at a very short distance from the defendant's house. To execute this order she employed a man named Baldwin, who was not regularly in the service of the defendant, but who was employed for occasional work. Baldwin was proved to have been intoxicated when engaged on this service. It was proved at the trial that when a small quantity of corn was to be carried only to a little distance, it was the custom of the defendant's shop for the man to carry it on his shoulders, and not to use a truck, but on this occasion Baldwin not only went into the granary and took out a truck, but he took out a truck quite unfit for the purpose, and left it and the sack on the side of the road. The learned Judge saying that wilfulness was quite out of the question here, left it to the jury to say whether they thought that negligence on the part of Baldwin had been proved to have been the cause of the accident. The jury answered that question in the affirmative, and returned a verdict for the plaintiff.

Mr. *Petersdorff* moved for a rule to shew cause why the verdict should not be set aside, and a new trial granted, on the ground of misdirection. The jury ought to have been asked whether the defendant was in any way connected with the manner in which Baldwin conducted himself on this occasion; for unless that question could be answered in the affirmative, the defendant could not be held liable for the act of Baldwin. The mere fact that Baldwin had, as an occasional man, been employed, to do a certain thing for the defendant, and while doing it had, by his negligence, caused an injury to the plaintiff, could not make the defendant liable. The case of *Goodman v. Kennell*,^a was in point. There a person casually employed by the defendant as his servant, being sent out by him on his business, took the horse of another person, in whose service he also worked, and in going, rode over the plaintiff. At the trial it was left to the jury to say whether or not the horse was taken by the servant, with the implied consent or authority of the defendant; and they having found a verdict for the plaintiff, the Court refused to grant a new trial. The same question ought to have been left in this case to the jury.

Mr. Justice *Williams*.—It seems to me that there was evidence of negligence to go to the jury in this case; and negligence in this particular, that the agent of the defendant em-

ployed for the purpose of this work a man who was not in a fit condition to be entrusted with any such employment. It may be true that the use of the truck was without the knowledge of the defendant, and perhaps against the rule of his business; but the state of the man at the time he was put upon the service was not unknown to the defendant. The negligence of the defendant was in employing such a man at all.

Mr. Justice *Coleridge*.—The point now sought to be presented to the Court does not arise in the present case. A person who employs a tipsy man to do any particular work, thereby becomes liable for the way in which that man does the work. The argument as to the personal ignorance of the defendant might be, if good for anything, carried to a much greater extent, and it might be said that the defendant was ignorant of what his sister did, and therefore could not be answerable for her acts. Yet it is clear that such an argument could not be maintained.

Mr. Justice *Williams* concurred.

Lord Denman, C. J.—It never was supposed, with respect to the occasion of an injury, that to make the master liable for the conduct of his servant, he must know and assent to the impropriety of conduct on the part of his servant. The master becomes liable from putting him in motion.

Rule refused.—*Wanstall v. Pooley*, M. T. 1841. Q. B. F. J.

WRIT OF TRIAL.

Where a writ of trial was returnable on the 27th of July, and the trial was begun on that day, and continued all day, and terminated at ten minutes before twelve o'clock at night, when the jury retired, and the verdict was not given until half past twelve, this Court refused to set aside the proceedings for irregularity.

Mr. *Newton* applied for a rule to shew cause why the proceedings in this case should not be set aside for irregularity. This was an action of debt for a sum of 4*l.*, and a writ of trial was issued, directed to the sheriff of Yorkshire, and made returnable on the 27th of July. The sheriff appointed the 26th of July for the trial. Several cases were tried before him on that day, and among them was one between the same persons who were parties to the present case. The defendant not being satisfied with the verdict in that case, took the opportunity, when the present case was called on, of objecting to the whole panel. The undersheriff allowed the objection, and appointed the next day for hearing the case. In the meantime another jury was summoned, and on the morning of the 27th the case came on for trial. The trial lasted till ten minutes before twelve o'clock at night, when the jury retired to consider the verdict. The jurors remained absent till half-past twelve, when they brought in a verdict for the defendant. The sheriff, though the objection was then made, received the verdict, and recorded it. It was clear that he had

^a 1 Moore & Payne, 241.

no authority to do this. The day on which the writ was returnable having expired, there was an end of the authority of the sheriff. *Mortimer v. Preedy*.^a There the writ of trial was returnable on the 19th of January. The Court was held in the first instance on the 18th, but was adjourned to the 20th, when the trial took place, and a verdict was given and returned by the undersheriff. The record then stated the trial to have taken place on the 18th. A motion was afterwards made in the Court of Exchequer to set aside the proceedings as irregular; and that Court held that the return day having gone by, the undersheriff had no authority to proceed to the trial of the cause.

Per Cur.—That case hardly lays down the rule so distinctly as is supposed. There is no good ground for interfering here. The whole proceeding seems to have been *bond fide*, and the trial was begun and continued, and all but the verdict given, before twelve o'clock on the return day. The defendant having, under these circumstances, taken his chance of a verdict after twelve o'clock at night, shall not now be allowed to ret it aside, when he finds that it is not in his favour.

Rule refused.—*Petier v. Booth*, M. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

SERVICE IN EJECTMENT.—ABSENCE ABROAD. —PRINCIPAL AND AGENT.

In an action of ejectment, the service of the declaration on an agent of the tenant in possession, the latter being abroad, was held to be sufficient for a rule nisi.

In this case it appeared that the tenant in possession was abroad, at Boulogne, but was in the receipt of certain rents, arising from real property in London, and which were collected by a person named Young. The declaration was served on the agent, as no one could be found on the premises.

Humphrey moved for judgment against the casual ejector, on an affidavit stating the above fact. He contended that the mode of service here adopted, would authorize the granting a rule nisi for judgment against the casual ejector.

Patteson, J.—I think that is sufficient.

Rule nisi granted.—*Doe d. Fieldhouse*, M. T. 1841. Q. B. P. C.

INDICTMENT.—AMENDMENT.—MISNOMER.— 7 GEO. 4, c. 64, s. 19.

Where an indictment is removed by certiorari from the quarter sessions into the Queen's Bench, and an objection is made by the defendant that his name is not that by which he is described in the indictment, and an affidavit to that effect is made by him; the Court will direct the indictment to be amended accordingly, pursuant to 7 Geo. 4, c. 64, s. 19.

Gurney moved that the defendant in this case should plead to an indictment against him for a misdemeanor.

The defendant appeared and stated that the name by which he was called in the indictment was not his. He was prepared with an affidavit to that effect.

Gurney then applied for leave to amend the indictment in conformity with the statement of the defendant, in pursuance of 7 Geo. 4, c. 64, s. 19. The fact of the indictment having been removed by *certiorari* from the quarter sessions would not permit the exercise of this power by the Court, pursuant to the statute.

Patteson, J.—The indictment may be amended according to the statement made by the defendant.

Rule absolute.—*Reg. v. Lack*, M. T. 1841. Q. B. P. C.

WARRANT OF ATTORNEY.—EXECUTORS.— SURVIVING EXECUTORS' POWERS.

On a warrant of attorney empowering the plaintiff to enter up judgment at his own suit, or that of his executors or administrators, against the defendant, his executors or administrators; judgment may be entered up at the instance of a surviving executor of the plaintiff against an executor of the defendant.

In this case a warrant of attorney was given by the defendant to the plaintiff, authorizing him to enter up judgment at the instance of his executors or administrators, against the defendant his executors or administrators. The plaintiff died, and one of the executors, whom he appointed as his executors, also died. The defendant subsequently died, leaving executors appointed by his will.

Petersdorff now moved for leave to sign judgment against the defendant's executors, at the instance of the surviving executor of the plaintiff.

Patteson, J., granted the application.

Rule granted.—*Fellowes v. Bradbury*, M. T. 1841.—Q. B. P. C.

OLD WARRANT OF ATTORNEY.—DEFENDANT ALIVE.—RULE NISI.

If a rule nisi only is required for judgment on an old warrant of attorney, it being above ten years old, the Court will allow a rule to be granted, although nearly three months have elapsed since the defendant was seen alive.

In this case, a warrant of attorney had been given by defendant more than ten years since. The defendant was seen alive in England on the 26th August.

Hance moved for leave to sign judgment against the defendant on the warrant of attorney. No doubt the period which had elapsed since the defendant was shown to be alive, was much longer than the usual period in such cases. The longest period in any of the cases was six weeks. The present case was distinguishable from those in which previous decisions had been pronounced, as they were applications for judgment absolute in the first instance. Here, however, the rule was required to be nisi in the first instance, the warrant

being more than ten years old. If the defendant was alive, he might come before the Court and give any answer which he had to the rule. If he was dead, as the plaintiff could not make the rule absolute without an affidavit of service, no injury could arise.

Patteson, J., under these circumstances granted a rule nisi.

Rule nisi granted.—*Anon. M. T. 1841. Q. B. P. C.*

SHewing CAUSE AGAINST RULE NISI.—AFFIDAVITS.—OFFICE COPIES.—ATTORNEY.

It is discretionary with the Court whether, in a case where a counsel appears to shew cause against a rule nisi, without office copies of the affidavits on which the rule has been obtained, time shall be given to procure such office copies.

In this case a rule had been obtained, calling upon an attorney to shew cause why one Rogers, his articulated clerk, should not be assigned; that rule having been enlarged, a second rule nisi had been obtained for filing an additional affidavit, against which

E. V. Williams now appeared to shew cause. He was unprepared with office copies of the affidavits on which the present rule had been obtained, copies of some other affidavits having been procured in mistake.

Chilton, in support of the rule, objected to *Williams* being heard. The grounds upon which the rule would be opposed were merely technical in their nature, and the Court would not feel inclined to exercise any discretion which it might possess to give time to procure copies of the affidavits, in favour of such an object.

Wightman, J.—It is discretionary with the Court to give time to procure office copies; but under the circumstances of this case, I think I ought not to give time for that purpose. The rule must be made absolute for allowing the affidavit to be filed.

Rule absolute.—*Ex parte Rogers, T. T. 1841.—Q. B. P. C.*

ENLARGEMENT OF RULE NISI.—FILING AFFIDAVITS IN ANSWER.

The Court will not enforce a compliance with the ordinary terms imposed on a party moving for the enlargement of a rule nisi, that he shall file his affidavits in answer a certain time previously to shewing cause, in a case where the necessity for the enlargement has arisen from the neglect of the party by whom the rule was obtained, in delaying the service of it so late as to render it impossible to shew cause according to its exigency.

A rule had been obtained on the 8th May, which was the last day of Easter Term, calling upon Mr. Anderson to shew cause why an information in the nature of a *quo warranto* should not issue against him for exercising the office of burgess of the borough of Ludlow, which was made returnable on the 22d May,

the first day of Trinity Term. On the 18th May the rule nisi was served at Ludlow, and on the same night it was despatched by Mr. Anderson to his attorney, whom it reached on the 19th. The 20th and 21st were holidays.

A motion was now made on behalf of Mr. Anderson, that this rule should be enlarged, on the ground that his attorney had been unable to obtain copies of the affidavits on which it had been obtained in sufficient time to shew cause on the 22d May. The present application, it was urged, was called for by the neglect of the attorney of the original applicant, in so long delaying the service of the rule, and should be granted, unrestricted by the usual terms, that Mr. Anderson should file his affidavits in answer within a certain time before the expiration of the enlarged time.

The Court enlarged the rule for ten days, the defendant not being required to file his affidavits in the ordinary manner.

Rule enlarged.

Jervis and Crompton, in support of the motion.

Regina v. Anderson, T. T. 1841. Q. B. P. C.

Common Pleas.

RE-ADMISSION OF ATTORNEY.—OMISSION TO TAKE OUT CERTIFICATE.

*An attorney having been duly admitted in 1799 in the C. P., continued to practise up to 1841 under a belief that his certificate had been duly renewed by his son, also an attorney, who acted as his agent in London, to whom he annually sent the requisite funds. On the last day of Trinity Term, in the last named year, it was ascertained that his certificate had not been taken out for 1832, 1834, and 1836. The son of the attorney was then dead. The Court of C. P. allowed the attorney to be re-admitted in M. T., without the usual notice, on payment of 25*l.*, the arrears of duty, and a nominal fine of 6*s.* 8*d.**

Shee, Serjt., moved for the re-admission of Mr. Robert Dawson Lee, an attorney of this Court, without the usual notices, and on payment of 24*l.*, arrears of duty, and of such nominal fine as the Court should direct. The learned Serjeant produced an affidavit, sworn by Mr. Lee, who stated that he had been admitted an attorney of this Court in the year 1799, and that he had practised as such attorney from that time to the present, and that he was still practising as such attorney on his certificate for the current year; that he had had no reason to believe that there had been any omission in respect of obtaining his certificate until after the trial of a cause of *Punter v. Lord Grantley*, in which he had acted as the plaintiff's attorney, where he had read an affidavit of one Fowler Walker Thomas, the managing clerk to the defendant's attorney, sworn on the 10th June, 1841, which had been filed in order to deprive him of his costs in that suit, stating that he had omitted to take out his certificate for the years 1832, 1834, 1836. The deponent further said that he was at a loss to account for this omission, which upon in-

quity he found to be truly alleged, except through the neglect of his son, who had been admitted an attorney of this Court in the year 1830, and had continued to act as the agent of the deponent (who resided at Brighton) up to the period of his death in 1839, to whom he had regularly transmitted the requisite funds for obtaining the annual renewal of his certificate; that he had had every reason to suppose that his said son had regularly taken out his certificate, and that he had, in that belief, continued to practise. It would be seen that the affidavit of Mr. Thomas had been sworn only on the 10th of June, which was the last day of Trinity Term, and the applicant had been unable, therefore, to give a term's notice of this motion. All question with regard to the costs in the suit of *Punter v. Lord Grantley* was at an end, and the attorneys for the defendant in that action had intimated that they had no objection to offer to this motion.

Tindal, C. J.—Under the particular circumstances of this case, seeing that Mr. Lee was unacquainted with the objection to his practising in time to give a term's notice, and that the discussion of this rule might open questions of considerable feeling, we think that the applicant may be re-admitted on payment a fine of 6s. 8d., and of the 25l. arrears.

Ex parte Robert Dawson Lee, M. T. (5th Nov.) 1841. C. P.

1 & 2 VIC. C. 110, ss. 18, 20.—ISSUING CA. SA. OUT OF COMMON PLEAS, ON ORDER OF COURT OF CHANCERY.

The 18th sec. of the 1 & 2 Vic. c. 110, which provides that decrees and orders of Courts of Equity, &c., shall have the effect of judgments, does not authorize the issuing of a writ of ca. sa. out of the Common Pleas, upon an order in Chancery; but a writ of ca. sa. having been so issued out of that Court, the Court will set it aside, and compel the opposite party to pay costs. Where an application was made in Michaelmas Term for setting aside such a writ with costs, the Court refused to grant a rule absolute in the first instance, the prisoner having been in custody since the previous 27th September, without applying to a Judge at chambers for his discharge; and on making the rule absolute, ingrafted on it the term, that the prisoner should bring no action.

Shee, Serjt., moved for a rule calling upon Alfred Robinson, an attorney of this Court, to shew cause why a writ of ca. sa. issued by this Court should not be set aside, and why he should not pay the costs of the application. The learned Serjeant moved on behalf of one John Stamford, a prisoner, who had been arrested on the 27th September, by virtue of a writ of ca. sa., alleged to have been issued out of this Court, in respect of certain costs awarded to Mr. Robinson in a cause pending in the High Court of Chancery, in which the latter was defendant, and the former plaintiff. The writ appeared to have been issued upon a mis-

apprehension of the 18th sec. of the 1 & 2 Vic. c. 110, (the act for abolishing arrest on mesne process,) which enacted that "all decrees and orders of Courts of Equity, and all rules of Courts of Common law, &c., whereby any sum of money, or any costs, &c., shall be payable to any person, shall have the effect of judgments in the Superior Courts of Common Law, and the persons to whom any such monies &c., shall be payable, shall be deemed judgment creditors within the meaning of this act; and all powers hereby given to the judges of the Superior Courts of Common Law, with respect to matters depending in the same Courts shall and may be exercised by Courts of Equity with respect to matters therein depending &c.; and all remedies hereby given to judgment creditors, are in like manner given to any persons to whom any monies &c., are by such order or rules respectively directed to be paid. The attorney had evidently erroneously concluded that the order of the Court of Chancery entitled him to proceed as if he had obtained a judgment in this Court. The 20th section of the act, however, set all doubt at rest, because it enacted, that such new writs should be issued out of the Courts of Law, Equity, &c., as might be deemed expedient to give effect to the provisions of the act. Forms of writs had been provided in the Chancery Courts in pursuance of this clause, and the attorney having obviously proceeded on an erroneous principle, the prisoner was entitled to his immediate discharge, and this rule, therefore should be absolute in the first instance.

Tindal, C. J.—Your rule cannot, in its terms, be absolute in the first instance, because you call upon Mr. Robinson to pay costs.

Shee.—At all events, cause should be shewn immediately.

Tindal, C. J.—It must be a four day rule. The prisoner has been in custody since the 27th September, and might have gone before a judge at chambers.

Channell, Serjt., subsequently appeared to shew cause. He admitted, that he could not contend that the writ had been properly issued, but urged that the Court would in making the rule absolute, impose the terms upon the prisoner, that he should not bring any action.

Shee, contrà.

Tindal, C. J.—That term must be made a part of the rule. The issuing of the writ was rather a mistake of the officer.

Rule absolute with costs. *Ex parte John Stamford, M. T. 1841. C. P.*

SERVICE IN EJECTMENT ON ATTORNEY TENANT.

The Court will grant a rule for judgment against the casual ejector, where the tenant in possession, on whom service has been effected, is an attorney, although the nature and meaning of the proceedings were not explained to him.

Talfourd, Serjt., moved for judgment against the casual ejector. The tenant in possession

was an attorney; he had been personally served with the declaration and notice; but the nature and meaning of the proceedings had not been explained to him. It was submitted that this was sufficient, such explanation being unnecessary to an attorney.

Tindal, C. J.—Take a rule.

Rule granted. *Doe d. Duke of Portland v. Roe*, M. T. 1841. C. P.

Court of Queen's Bench.

Michaelmas Term, 1841.—15th Nov. 1841.

THIS Court will, on Friday, the 26th, and Saturday, the 27th November instant, hold sittings, and will proceed in disposing of the business in the *New Trial Paper*, and giving judgment in pending cases.

By the Court.

QUEEN'S COUNSEL PRACTISING IN THE EQUITY COURTS.

AT considerable trouble we obtained information regarding the several Equity Courts selected by the Queen's Counsel, as stated in our number for 6th Nov. (p. 9). The arrangements of no less than twenty-two leading barristers, some of whom had only just returned to town, could not perhaps be expected to be precisely known; especially as some of them were previously engaged in causes which they were obliged to follow. One of them appeared at the beginning of the term in three of the Courts, but has since selected one only. To the former list, therefore, we have to add the following:

Before the *Lord Chancellor* and the *Vice Chancellor of England*.

Mr. Bethell.

Before *Vice Chancellor Wigram*.

Mr. Miller.

NOTES OF THE WEEK.

CHANCERY REFORM.

No further step has as yet been taken with respect to the Chancery Commission, so far as we can learn: indeed, it has been said that no such commission will be appointed; but we have good reason for thinking that the persons named last week as commissioners had expressed their willingness to

act; and we think it will be found that they will proceed to do so in due time.

JUDICIAL CHANGES.

THERE have, since the commencement of the term, been various rumours afloat of judicial changes. The Lord Chief Baron and Mr. Justice Bosanquet have both been, according to them, obliged to resign on account of ill health; and various other persons have been raised to the bench in their places. These statements are at any rate premature, no such resignations having taken place.

THE EXAMINATION.

WE have given a kind of digest of the Examination Questions, with a view to aid the student in his research for proper answers to them. This will form a useful exercise. Five of the candidates have been unsuccessful, and 113 were passed.

THE EDITOR'S LETTER BOX.

E. C. is requested by another correspondent to state the authorities for his position at p. 7, *ante*, that "a deposit by a debtor of his lease, is not a breach of a covenant against assignment, unless expressly prohibited."

We cannot undertake to inform A. whether the study of the four books he mentions will enable him to pass the examination. They are good books, but others are clearly necessary.

In answer to a correspondent in Yorkshire, we have to state that the Examiners appointed for examining articulated clerks, require candidates for admission to answer the questions on Equity and Practice of the Courts, and Common Law and Practice of the Courts, as two of the branches which it is necessary that they should answer. Notice of this regulation was given, we believe, two or three years ago.

A clerk whose articles expire on the 5th May, may be examined in Easter Term.

The letter on the Mortgage of Ships has been received.

We hear that it was determined by the late Lord Chancellor in the case of *Whitworth v. Gargain*, that an execution in equity takes precedence on land over an equitable charge by a deposit of deeds.

P. Q., whose articles expire in Easter vacation, but will not be of age till the beginning of September, cannot be examined in Trinity Term without a special order of the Court or a Judge.

The communications of "A Poor Writer;" J. B. E.; "A Subscriber;" "A Country Solicitor;" Z. E.; D. E. J.; and "A Country Subscriber;" shall receive the earliest attention in our power.

Our readers will observe that we have condensed the Reports of Cases, and have thus been enabled to give a larger number than usual.

The Legal Observer.

SATURDAY, NOVEMBER 27, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

EFFECT OF THE NEW ORDERS IN CHANCERY.

DISTRINGAS ON BANK STOCK.

THE Orders in Chancery of the 17th November,* relating to Distringas on Stock, refer to the form of an affidavit, which will occasion considerable difficulty in practice; and we consider it important to call attention to the subject, as these transactions are very numerous, and relate to property of enormous amount.

The 1st Order authorizes all persons claiming to be interested in stock transferable at the Bank of England, to prepare by their solicitor a writ of distringas; and the 2d Order directs that such writ shall be sealed, on leaving at the Subpœna Office an affidavit duly sworn by the person applying for the writ, or his solicitor, in the form set out at the foot of the Orders.

Now the form requires that, besides swearing to a beneficial interest in the stock to be affected by the writ, the party (or his solicitor) should state "that he has reason to believe, and does believe that there is *danger* of such stock being dealt with in a manner *prejudicial* to his interest."

To the first part of the affidavit there may be no objection, but the latter will lead to consequences which the Court can never intend to take place. An unscrupulous party may make the affidavit either with or without some mental reservation of imaginary danger, but conscientious persons who have really no reason at the time of making the affidavit to suspect that the trustees of the stock will act improperly, cannot take the oath, and consequently to them the present Orders have the effect of taking away an important means of secu-

rity which they formerly possessed. Another consequence consists in unnecessarily compelling the applicant to cast an imputation upon trustees, whose integrity he may have no cause to doubt; and yet a prudent solicitor would consider it a duty to his client to place the stock beyond the possibility of risk. By the former practice, this was done without offence, as a step taken in the ordinary course of business.

It may be said that the danger contemplated by the Orders is that of the death or change of trustees, and the uncertainty regarding their representatives or successors; but if the affidavit is thus to be reduced to a matter of form which any one may make, it had better be dispensed with altogether. No such affidavit (nor indeed any affidavit whatever) was required by the Court of Exchequer, and we never heard that any grievance arose out of the practice, nor do we believe that the new form of affidavit will prevent any supposed evil. For those who, at the peril of costs and of an action for damages, would improperly issue a distringas, will not be deterred from doing wrong, by having to make an affidavit capable of the vague interpretation which has been suggested.

The Act on this subject, 5 Vict. c. 5, s. 5, directs that in place of the writ of distringas, theretofore issued from the Court of Exchequer, a writ of distringas shall be issuable from the Court of Chancery, and "the force and effect of such writ, and the practice under or relating to the same shall be such as is now in force in the Court of Exchequer." Under this part of the clause, we presume the Court could not have made the order in question; but the clause contains a proviso which subjects the practice to the orders and regulations of the

* See p. 35, ante.

Court of Chancery. Still, we conceive, it was the intention of the Legislature not to deprive the suitor of any advantage which he possessed under the Exchequer practice; and we trust the orders will be altered accordingly. We know that it was understood, when the bill passed through Parliament, that the beneficial practice of the Exchequer regarding these writs of distringas should be preserved, and the 5th section was introduced as an amendment for this express purpose.

It may also be observed that these orders of the 17th November, are limited to Stock at the Bank of England. Now the 4th section of 5 Vict. c. 5, authorizes the Court of Chancery, upon application of the party interested, by motion or petition, in a summary way, without bill filed, to restrain the Bank of England or any other public company, whether incorporated or not, from permitting the transfer of stock in the public funds, or the stock or shares in any public company, or from paying any dividend thereon.

It is true that the vast majority of transactions to which the remedy by distringas would apply, take place at the Bank of England; but the practice of the Court of Exchequer was not limited to stock at the Bank of England. Though the schedule to the 5 Vict. c. 5, gives a form applicable to the Bank of England only, and the 5th section refers to this form; yet we presume the Court in exercise of its general powers under the act may adapt this form to the several classes of cases contemplated by the act. We conceive therefore that the orders should be amended, as well with regard to the form of the affidavit as to the species of stock to be restrained; and that the distringas should extend to South Sea Stock, and any other which could formerly be attached in the Court of Exchequer.

We have received several suggestions on this subject. One of our correspondents, truly observes, that it is the almost invariable practice to place a distringas on the occasion of selling or charging interests in the public stocks, not only as an additional security, but in order that the party may have notice of any alteration in the fund.

The New Orders of Lord Cottenham, printed 22 L. O. 371, with the exception of the five first, (see *post*, p. 52) came into operation on Friday last.

LEGACY DUTY.

In the *Attorney General v. Cockerell*,^a legacies bequeathed by a British subject resident in the East Indies, out of his personal estate, to persons living in England, were held to be liable to duty, if the executor proved the will in England and paid the legacies here, notwithstanding the testator realized and possessed his property in India, resided there, made his will there, and died there, although the executors were in India at the time of their appointment; the will was originally proved there; and these rules were adhered to in subsequent decisions.^b These cases have, however, been overruled, and it is now clear that when a testator dies under these circumstances, legacy duty is not payable, although the will is afterwards proved in England,^c even though the property is remitted from India and administered by the executors in this country. But where a testator, domiciled in England, died possessed of property in foreign funds, payable abroad, but it appeared that the stock had been transferred into the name of the executor "in England, and he had dealt with and transferred the dividends to the legatees, the duty was held to be payable;"^d and in the latest case on this subject—where a British subject domiciled in England, made his will, and died in England; and by his will disposed of certain government notes of the East India Company issued at Calcutta, the amount of which was receivable only under an Indian probate, and appointed an English executor, the executor granted a power of attorney to S., in India, who thereupon obtained letters of administration with the will annexed in India, under which he received the amount of the notes, and remitted it to the executor in England, who paid it over to the legatees, and it was held that legacy duty was payable thereon. Mr. Baron Parke said:—

"The authority of the *Attorney General v. Beatson* cannot certainly be considered as any longer binding, after what was decided by the Lord Chancellor in *Arnold v. Arnold*; but in *Arnold v. Arnold*, it appears clearly to have been the Lord Chancellor's opinion that if the testator had been such

^a 1 Price, 165.

^b *Attorney General v. Beatson*, 7 Pri. 560; *Logan v. Fairlie*, 2 Sim. & Stu. 284.

^c *Attorney General v. Jackson*, 2 C. & P. 101; 8 Bli. 15. *Arnold v. Arnold*, 2 Myl. & Cr. 256.

^d *la re Ewin*, 1 C. & P. 151; 1 Tyr. 92.

a person as is described in the Act of Parliament, the duty would have been payable; and the ground upon which it was held not to be payable in that case was, that the testator was not domiciled in England, but in India; and that the will of the testator was made in India. But in this case, not only is the legacy payable in England by Mr. Dyneley, but the will is the will of a British subject; at least, if that be material, we ought to assume it to be so, inasmuch as the contrary has not been proved: at all events, it is the will of a person domiciled in England; and according to the case of *In re Ewin*, a person so domiciled fills the character of "a person" described in the Act of Parliament. Therefore we have in this case all that the Lord Chancellor, in the case of *Arnold v. Arnold*, seems to think necessary in order to make the duty payable. We have first the fact that the testator was a British subject, or a person domiciled in England; and next, that the will was made in England, and administered in England by an English executor. It seems to me, therefore, that there is no doubt, even according to the authority of the case which was relied upon by Mr. Richards as overruling former decisions of this Court, that the legacy duty is payable in this case.*

* *In re Coates*, 7 Mee. & Wels. 390.

SET-OFF IN EQUITY.

THE rules as to set-off at common law are well known and established, but the doctrine of set-off in equity is not so familiar or well defined, and we shall take the opportunity of several recent cases having occurred respecting it to endeavour to explain it.

At common law, the mere existence of cross demands is sufficient to establish it, but it is not so in equity; equitable set-off exists only in cases where the party seeking the benefit of it can shew some equitable ground for being protected against his adversary's demand.*

In *Beasley v. D'Arry*,^b a tenant having a claim against his landlord for unliquidated damages, occasioned by cutting timber on the demised premises, in pursuance of a power so to do reserved by the lease, the landlord brought an action of ejectment for nonpayment of rent; the tenant filed his bill, stating his claim, and charging that if ascertained and credit given for it, there would not be a year's rent in arrear. That fact being established on an issue, the tenant was restored to the possession, which the landlord had in the mean time obtained, on paying the balance due

by him, and decreed entitled to an account of mesne profits. The equity in this case against the landlord was that he ought not to recover possession of the farm for nonpayment of rent whilst he owed to the tenant a sum of damage for that same farm.^c So where there have been various dealings between landlord and tenant, so as to produce an account too complicated to be taken at law, and the landlord has brought ejectment for non-payment of rent, the tenant may file a bill before judgment at law for an account on the foot of those dealings, and to have the balance applied to the rent claimed to be due.^d

In *Ex parte Stephens*,^e *Piggott v. Williams*,^f *Lord Cawdor v. Lewis*,^g *Preston v. Strutton*,^h the same principle guided the decision of the Court.

In *Williams v. Davis*,ⁱ however, a different principle was acted on by Sir L. Shadwell, V. C. In that case a motion was refused to dissolve an injunction, granted on affidavit and certificate, to restrain execution on a judgment obtained by the defendant against the plaintiff, the latter having obtained a judgment to a greater amount against the former. Here both claims were legal, and no matter of equitable jurisdiction was involved. But it may be said with truth, that the case stands by itself, and will not, probably, be followed.

In the recent case of *Rawson v. Samuel*,^j the circumstances were these. The defendant Samuel was to send out goods to several houses in distant parts, connected with the plaintiff's house in this country, who were to sell and remit the proceeds to the plaintiffs, and they were to accept bills to be drawn on them by the defendant upon the shipment taking place. The result was, that the plaintiff became largely in advance, the bills becoming due, and being paid by them, before remittances or consignments were received from abroad to meet them. The plaintiffs alleged that this arose, in a great degree, from the misconduct of the defendant in drawing bills upon them for larger sums than the value of the goods shipped justified, and in directing the houses abroad not to sell, and in refusing to renew the bills: "but, however that may turn out in the progress of the cause, I do not find (said Lord Cottenham) in the answer any admissions which can, upon this motion, enable the plaintiffs to proceed upon the ground that any of those allegations are so established as to entitle them to any order founded upon their being true; but it is admitted that there is a complicated account to be taken between the plaintiffs and the defendant, upon the result of which, however, the defendant says he believes that a balance will be found due to him. The subject of the action at law is the refusal of the plaintiffs in equity to accept bills drawn by the defendant in pursuance of the agreement upon certain

^c Per Lord Cottenham, C. 1 C. & Ph. 179.

^d *O'Connor v. Spaight*, 1 Sch. & Lef. 306.

^e 11 Ves. 24.

^f 6 Mad. 96.

^g 1 Yo. & Coll. 427.

^h 1 Anst. 50.

ⁱ 2 Sim. 461.

^j 1 C. & Ph. 161.

^a *Phyee v. O'Brien*, 1 Sim. & Sta. 551; Per Lord Cottenham, C. 1 Craig & Ph. 178.

^b 2 Sch. & Lef. 403, n.

shipments made to the houses abroad. The Vice Chancellor's order permits the trial of this action, but restrains the execution in case a verdict should be found for the plaintiffs at law. The case, therefore, to be considered, is the plaintiffs' recovering a verdict; that is to say, the case of the plaintiffs in equity having broken their contract, and improperly refused to accept the bills; and the question is whether the defendant in equity, having obtained a verdict, as compensation for such a breach of contract and consequential injury, ought to be restrained from receiving the sum so awarded to him until the complicated account stated in the bill shall have been taken and the balance ascertained. This would produce the most obvious injustice, if the balance should be found in favour of the plaintiff at law, which he has sworn he believes it will; but whatever weight may be attached to this statement of belief as to the probable balance of a long and complicated account, the case is certainly not one in which the plaintiffs in equity can ask the Court to assume that the balance will be in their favour. The equity, therefore, must rest upon the admitted evidence of a complicated and unsettled account. It was said that the subjects of the suit in this Court, and of the action at law, arise out of the same contract; but the one is for an account of transactions under the contract, and the other for damages for the breach of it. The object and subject matters are, therefore, totally distinct; and the fact that the agreement was the origin of both, does not form any bond of union for the purpose of supporting an injunction. The question then comes to this, is the defendant in a suit in this Court for an account, the balance of which I will suppose to be uncertain, to be restrained from taking out execution, in an action for damages against the other party to the account, until after the account shall have been taken, and it shall thereby have been ascertained that he does not owe to the defendant at law, upon the balance of the account, a sum equal to the amount of the damages? If so, it cannot be upon the ground of set-off, because there is not at present any balance against which the damages can be set off; nor can it be because the damages are involved in the account, for certainly they can form no part of it. We speak familiarly of equitable set-off, as distinguished from the set-off at law; but it will be found that this equitable set-off exists in cases where the party seeking the benefit of it can shew some equitable ground from being protected against his adversary's demand. The mere existence of cross demands is not sufficient; *Whyte v. O'Brien*, 1 S. & S. 551, although it is difficult to find any other ground for the order in *Williams v. Davies*, 2 Sim. 461, as reported. In the present case there are not even cross demands, as it cannot be assumed that the balance of the account will be found to be in favour of the defendants at law. Is there, then, any equity in preventing a party who has recovered damages at law, from receiving them, because he may be found to be

indebted, upon the balance of an unsettled account, to the party against whom the damages have been recovered? Suppose the balance should be found to be due to the plaintiff at law, what compensation can be made to him for the injury he must have sustained by the delay? The jury assess the damages as the compensation due at the time of their verdict. Their verdict may be no compensation for the additional injury which the delay in payment may occasion. What equity have the plaintiffs in the suit for an account to be protected against the damages awarded against them? If they have no such equity there can be no good ground for the injunction." And in another recent case,¹ *Lord Cottenham, C.*, also held, that where there are cross demands between two parties of such a nature that if both were recoverable at law, they would be the subject of legal set-off, then if either of the demands is matter of equitable jurisdiction, the set-off will be enforced in equity.

NEW ORDER IN CHANCERY.

SUSPENDING THE FIRST FIVE ORDERS OF AUGUST.

[The Orders in Chancery of the 26th August will be found 22 L. O. 371; those of 11th November, p. 24, *ante*; and those of the 17th November, p. 35, *ante*. The following are the last New Orders.]

Friday, the 19th day of Nov. 1841.

WHEREAS it is expedient that further Orders should be made for the better administration of justice in the Court of Chancery with reference to the matters to which the First, Second, Third, Fourth, and Fifth Orders of the twenty-sixth day of August last apply, and that in the mean time the operation of the same Orders should be suspended.

Now therefore, I, the Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls; the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England; the Honourable the Vice Chancellor James Lewis Knight Bruce, and the Honourable the Vice Chancellor James Wigram, DO HEREBY, in pursuance of an act of parliament made and passed in the fourth year of the reign of her present Majesty, intitled "An Act for facilitating the Administration of Justice in the Court of Chancery," and of an act made and passed in the session of parliament held in the fourth and fifth years of the reign of her said Ma-

¹ *Clarke v. Cort*, 1 C. & Ph. 154.

jeaty, intituled "An Act to amend an Act of the Fourth Year of her present Majesty, intituled 'An Act for facilitating the Administration of Justice in the Court of Chancery,'" ORDER and DIRECT that the First Second, Third, Fourth, and Fifth Orders of the twenty-sixth day of August last, shall not take effect till the first day of Easter Term one thousand eight hundred and forty-two.

(Signed) "LYNDHURST, C.
LANGDALE, M.R.
LANCELOT SHADWELL, V.C.
J. L. KNIGHT BRUCE, V.C.
JAMES WIGRAM, V.C."

NOTICES OF NEW BOOKS.

Outlines of the Law of Real Property : or Readings from Blackstone and other text writers ; including the Alterations to the End of the last Session of Parliament. By Robert Maugham, Secretary to the Incorporated Law Society. Part I., comprising, 1. Property in General; 2. Corporeal and Incorporeal Hereditaments; 3. Tenures; 4. Estates; 5. Uses and Trusts.

THIS is another part of Mr. Maugham's series of Outlines of Law, comprising such parts of Blackstone's Commentaries as remain unaltered at the present time, incorporating, concisely, all the new enactments and decisions, and completing from other text writers and reports, an elementary course of reading.

The following is extracted from the Preface ;—

"Notwithstanding the reverence which every lawyer must feel for the name of Blackstone, and the reluctance with which every editor of his works must perform the task of abridging and altering them, it is manifest, from the various new methods of editing the Commentaries, (some already before the public, and others announced or designed), that an opinion is fast gaining ground, that the old plan of reprinting the *entire text*, with elaborate notes and annotations, will ere long be superseded by new Commentators, though still adopting a large part of the labours, and following the course of their unrivalled master.

The present writer submits, that not only those portions of Blackstone which are no longer law should be omitted, and the alterations introduced in their appropriate places, but that numerous *additions* should be made which were never comprehended in the original Commentaries, or were passed over with a

brevity unsuited to their present importance. It should be remembered that the edition which received the last corrections of the learned Judge, was published seventy years ago, and that since that time, and especially within the last ten years, vast changes have been effected.

"It is obvious that if Blackstone had written in these days, he would have narrated the repealed parts of the law, not elaborately, but concisely, as subjects of history. He describes his work as composed of 'elementary disquisitions,' and whilst he entered with comparative fulness into the more important subjects of existing law, it is obvious that (to use his own words) it would not have been 'consonant to the design of these elementary disquisitions,' to retain large portions of the law which had been superseded by new statutes, and followed by new judicial constructions. These by-gone rules, whether of the legislature or the superior Courts, would doubtless have been treated by the learned Judge with the brevity of an historian, rather than the prolixity of a professor.

"With these views the compiler of the following pages has already published '*Outlines of PRIVATE and PUBLIC WRONGS, and their Remedies in the Courts of Common Law, Equity, Bankruptcy, and Criminal Law,*' and he now submits to the profession and the public the first part of Outlines of the Law of '*REAL PROPERTY.*'

"Each of these volumes has been grounded on the Text of Blackstone, omitting the repealed parts, and incorporating concisely all the important new enactments and decisions, and, so far as consistent with the Commentator's design of 'elementary disquisitions,' enlarging some chapters of the work from other text writers and reports : thus supplying, it is hoped, an *elementary course of reading* in all the principal branches of the law, grafted on the main stem of the Commentaries."

POINTS OF LAW, BY QUESTION AND ANSWER.

AGREEMENTS.

1. Is a verbal agreement to take furnished lodgings for three years, valid ?
2. Must a promise to indemnify a co-surety be in writing ?
3. Can parol evidence of the consideration of an agreement be given in support of a written agreement ?
4. Is an agreement to occupy lodgings at a future day, within the meaning of the statute of Frauds ?
5. Must the assignment of a copyright be in writing ?
6. Is an agreement for the sale of wheat to be delivered at a future time, within the statute ?
7. Is a purchaser at an auction, who signs a memorandum on the particulars of the pre-

mises, bound to complete his purchase though the vendor does not sign the certificate?

8. Is a subsequent ratification by a principal of a contract by his agent, equivalent to a previous authority?
9. Is a bill of parcels, with the vendor's name, printed, and that of the vendee written by the vendor, a sufficient contract in writing?
10. An auctioneer wrote down the name of the highest bidder for goods in his book: is this a sufficient signature?
11. A broker was authorized to sell goods for one principal, and to buy for another. Is an entry in his books, of a sale from the one to the other, sufficiently binding?
12. If a purchaser at the time of the sale of goods to him, write his name on them, will that be a sufficient memorandum in writing within the statute?
13. A parol agreement for a lease was entered into, and a draft lease prepared: is this binding?
14. Is an agreement written by the party who begins it thus, "I, A. B.," binding on him without a subsequent signature?
15. Is an auctioneer's entry in his book, of the name of the buyer of a lot of land a sufficient notice in writing?

ATTORNEYS' CERTIFICATE DUTY.

To the Editor of the Legal Observer.

Sir,

GREAT credit is due to you for constantly urging the propriety and justice of the repeal of the duty on attorney's certificates. If you were properly supported by the profession, there would be no doubt of success. But, unfortunately, though the grumbling is general, it reaches no further than grumbling; no vigorous efforts are made in the quarter from which the change must come.

It is not likely that any Chancellor of the Exchequer will spontaneously and unsought, propose the abolition of this tax. The payment of it is obtained so easily, and at such little expense, that there is no doubt it will be continued as long as possible. No collector takes his rounds, soliciting at your door its due discharge,—his reward being a per centage on the amount. No officer even, is set exclusively apart for its receipt. The clerks who gather this into the garner, attend to other matters. But, cruel are the penalties which visit the poor attorney who offends against the enactment directing certificates to be taken out within a limited period; and poverty, in his case, is almost made to assume the aspect of crime, causing him to be looked upon by many of his professional brethren even, as well as others, coldly and askance, however great may be his legal skill and moral merit.

The injustice of this duty altogether has been, time after time, so clearly and so forcibly stated by you, that it would be unpardonable

in me to waste your time in vain repetitions. My object in co-labouring in the cause, is to urge energy, perseverance, and unanimity, in bringing the consideration of the subject where only consideration can adequately avail;—I mean before the Parliament of these kingdoms. Petitions should be transmitted from every corner of the land, and no attorney should withhold his signature. The Law Society should cheerfully furnish its co-operation. And in Parliament, the legal profession is always well represented, and most of the Members of the House of Commons must sympathize with the cause when efficiently brought forward, as they doubtless rank among their connections some one or more of our, in this respect, ill-used race. Get the grievance before Parliament, keep it there with untiring zeal, let the abolitionist senators be animated with as steady a desire for success, and as unceasing efforts to obtain it, as was old Cato, when he concluded every speech with the words "delenda est Carthago," and the case will be won. Perseverance works wonders, even against the bitterest hostility: how much greater then, is its chance, where much sympathy may be expected? But, suppose the worst, that the injustice of the tax is denied, that the proposition for its repeal is looked coldly on, and that direct and indirect efforts are made to evade or crush the investigation of the subject. Still, I say, persevere; abate not one jot of heart or hope, and success will come. "Magna est veritas, et prævalebit," is a saying old and true. Put "perseverantia" for veritas, (the cause being of course, good) and the saying is supported by the experience of all ages. The unjust judge, mentioned in scripture, though he neither feared God nor regarded man, yet did justice to the poor widow, because she wearied him with her importunity.

VINDEX.

Sir,

The attorneys and solicitors are indebted much to you for your exertions towards their alleviation from the impost of certificate duty, a tax which is now as unjust as unnecessary: *unjust*, because the most lucrative professions and callings in this country are wholly exempt from payment of any annual duty: *unnecessary*, because the reason of its enactment was long ago satisfied, and the necessity of its continuance no longer exists.

What is the history of the certificate duty? It was imposed in 1785, with other taxes, to make up a large deficit in the revenue and the emergencies of an impending war, at the moderate scale of 5*l.* on London practitioners, and 3*l.* on those in the country. By the general stamp act, the attorneys were required to pay additional duties, which have continued undiminished to the present day. Surely, as that war has long ceased, the necessity for the certificate duty no longer exists. I say, and insist, therefore, it ought, as an act of justice, to be repealed, and to have been repealed long ago. Or, why has not the original scale of the year 1785 been adopted, and thus partial

alleviation given to the practitioner! When the statute was enacted which imposed the duty, the number of attorneys and solicitors was small, compared with that of the present day. The purposes of a war abstracting the attention of parents from placing their sons in the civil professions, the return of duty, to aid in filling the coffers of the revenue, must then have been little; now-a-days, the taxing of attorneys is a very prolific, but a very unjust and oppressive way, of providing for the emergencies of the state.

In the *medical* profession, exertions have been made by an unanimous feeling, to secure themselves adequate remuneration and resist unjust aggressions, and the result has been successful. The bishops and other dignified ecclesiastics have founded societies and means for the support of the humbler *clergy*. But the members of the legal profession have to fight their way in the world, be the times those of war or peace, let the expenditure of the government be large or small, with their education, examination, admission, knowledge, and earnings, all taxed at the highest possible amount! Why they should be so marked out for taxation, I know not!

I perceived in a recent number of your work, a clause in Lord Langdale's proposed bill for the consolidation and amendment of the law of

attorneys, to the effect, that no attorney shall be allowed to take an articulated clerk until he has been in practice five years. If this clause is allowed to pass, surely the attorneys to be affected by it, should not be called upon to pay any certificate duty during those five years. But, Sir, half measures will not do. The repeal of the duty should be entire as to the whole profession; for its existence is a grievance and an arbitrary impost. What are the profits of the attorney compared to those of the architect, the surveyor, the merchant, the land-agent, or the mercantile broker? The surveyor and land-agent charge for their time and attendances in the same manner as attorneys, only that they take higher fees; and yet these callings are free from all duty of tax! How hard does the certificate duty bear upon those persons, who, born of highly respectable parents of very limited means, have to struggle on with a pittance given them at their outset in life!

There remains, then, no doubt, that relief from the certificate duty would be an act of justice, redounding to the credit of the ministry in power, and insuring them the lasting respect of all honourable attorneys and solicitors.

ATT. AD. LEG.

ATTORNEYS TO BE ADMITTED.

Hilary Term, 1842.

QUEEN'S BENCH.

Clerk's Name and Residence.

To whom articulated, assigned. &c.

Allison, John Piek, 25 Moorgate Street; and Thirsk, Yorkshire.

William Whytehead, Thirsk; assigned to Thomas Swarbreck, Thirsk.

Allenby, Henry Hynman, 3, Arundel Street, Haymarket; Kenwick House; and the Close, Lincoln.

Joseph Moore, Lincoln.

Borsey, William Henry, 3, Furnival's Inn; and Slough.

Thomas Tindal, Aylesbury.

Buckerfield, T. Hinchman, 3, Southampton Street; Hampstead Road; and Pyle, Glamorganshire.

John Halcomb, Marlborough.

Beaumont, Henry Arthur, 6, Raymond Buildings.

Charles Bell, Bedford Row.

Beecraft, Richard Incedon, 13, Everett St.; Brunswick Square; and Barnstable.

John Sheppard Clay, Barnstable.

Bridges, George Talbot, 11, Margaret Street.

Nathaniel Mason, Red Lion Square.

Browne, John William, 3, Ormond Street, Queen Square; and Dulverton.

Augustus Pulsford Browne, Dulverton.

Bissell, Charles Edward, Sleaford, Lincolnshire.

Charles Pearson, Sleaford.

Barber, Samuel Good, Worcester.

William Laslett, Worcester; assigned to Henry Maddocks Daniel, Worcester.

Bailey, Francis, Clitheroe.

Henry Hall, Clitheroe.

Bronckhorst, Henry A., 4, Adelaide Terrace, Islington.

John James Foquett, Newport, Isle of Wight; assigned to Richard M. Whitlow, Manchester.

Bowden, Frederick L. T., Stamford Hill.

John Saunders Bowden, Alderbury.

Berkeley, Maurice Henry, 2, Dartmouth Row, Blackheath.

John Innes Pocock, Lincoln's Inn Fields.

Browne, Eyles Irwin Caulfield, 12, Garnault Place, Pentonville; and Rivers Street, East Retford.

George Marshall, East Retford.

Buncombe, William, 3, Compton St., Brunswick Square; Judd Street; and Chard.

Samuel Walter, Chard.

<i>Clerk's name and Residence.</i>	<i>To whom articulated, assigned, &c.</i>
Boyle, Frederick, 14, Priory Road, Wandsworth Road.	Henry Hoppe, Sun Court, Cornhill.
Cuff, Joseph, 27, Liverpool Street, King's Cross.	William Crawford Newby, Stockton-upon-Tees, and Oxley Tilson, Coleman Street.
Cracknell, John Benjamin, Lyncombe; and Widcombe.	Edward Webb, Walcot, Somerset.
Craig, Alexander Samuel, 27, University St.; and Shrewsbury.	John William Watson, Shrewsbury; assigned to Sir J. B. Williams, Knt., Shrewsbury, assigned to Charles Dixon Craig, Shrewsbury.
Charsley, Frederick, 6, Great Ormond Street; 36, Gloucester Street; and Beaconsfield.	John Charsley, Beaconsfield; and Bryan Holme, New Inn.
Chandler, Charles, 23, Wakefield Street, Regent Square; Shrewsbury; and New Boswell Court.	Thomas Salt, Shrewsbury.
Chew, Thomas Heath, Manchester.	William Christopher Chew, Manchester.
Carpenter, Frederic, 5, Porchester Place, Oxford Square.	Edward Elkins, Newman Street
Cobb, John, 25, Henrietta Street, Brunswick Square; Gloucester Street; and Great Ormond Street.	Samuel Haines, Tavistock Place; assigned to David Harrison, Walbrook.
Chevalier, Clement, Southtown, Suffolk.	Charles John Palmer, Great Yarmouth.
Clarke, John, 10, Stafford Place, Pimlico; and Banbury.	Thomas Tims, Banbury.
Catterall, John, Preston, Lancashire.	John Abraham, Preston.
Compigné, Alfred, 5, Upper Montague Street, Russell Square.	James Sowton, Great James Street; assigned to John Gregory, Clement's Inn.
Clarke, Robert Eagle, 56, Spencer Street, Northampton Square; and 8, Jeffery's Square.	William Clarke, Thetford.
Cosserat, David Peloquin, 94, Parke Street, Camden Town; and Bramford Speke.	Arthur Abbott, Exeter.
Cunnington, John, the younger, Braintree, Essex.	John Cunnington, the elder, Braintree.
Carr, Henry, York.	Arthur William Tooke, Bedford Row; assigned to Thomas Ward, York; assigned to Francis Short, York.
Cope, Henry, the younger, 14, Agnes Place, Waterloo Road.	Henry Cope, Agnes Place.
Down, James Dundas, 27, Wilmington Square; Burleigh Street; and Southampton.	Charles Davies, Southampton.
Docker, William, 89, Quadrant; Albany St.; and Bromsgrove.	Ralph Docker, Birmingham; assigned to G. Vernon, and L. Minshall, Bromsgrove.
East, Alfred Baldwin, 5, Bouverie Street; King's Norton; and 5, Waterloo Road.	John Stubbs, Birmingham; Assigned to John Wilkes Unett, Birmingham
Edmunds, James Heming, Northampton.	Thomas Cave Hall, Northampton.
Eade, Joseph, Clapham Common; and Hereford.	William Henry Bellamy, Hereford.
Ellis, Arthur, 49, Bernard Street, Russell Square; Henrietta Street; Harwood Street; Bingley.	Arthur Lace, Liverpool.
Fisher, Frederick William, 18, Lower Wharton Street, Lloyd Square.	James Campey Laycock, Huddersfield.
Fenwick, John William, 18, Lower Wharton Street; and North Shields.	Richard Barker, North Shields.
Freer, Thomas, Glamford Briggs, Lincolnshire.	George Saffery, Market Rasen; assigned to John Nicholson, Glamford Briggs.
Fowler, Henry, the younger, Scarborough.	John Uppleby, Scarborough.
Farrer, George, 33, George Street, Hanover Square; and Clarges Street.	Timothy Tyrrell, Guildhall.
Fryer, Merlin, 16, Buckingham Street, Fitzroy Square; and Saint Thomas Apostle.	William Marks Benison, St. Thomas Apostle; assigned to George Wilson Grove, Exeter.
Finden, Francis, 9, Charter House Square; Winchester.	W. W. Woodward and H. Whately, Pershore; assigned to Charles Wooldridge, Winchester.
*Gladstone, William Cotterell, 9, Upper Stamford Street, Blackfriars.	Henry Frederick Holt, 2, New Inn, Strand.

* Marked thus are Common Pleas applications. The rest are in the Queen's Bench.

Clerk's Name and Residence.

To whom articulated, assigned, &c.

- Griffith, Morris, Bangor, Carnarvonshire.
 Geare, William, 57, Lincoln's Inn Fields; Exeter; and Essex Street.
 Giddy, Charles, 10, Myddleton Square; and Princess Street, Red Lion Square.
 Gridley, Henry Gillett, 28, Jermyn Street.
 Grant, Frederick Allan, 15, Guildford Street.
 House, Samuel Wood, 7, Mylne Street, Myddleton Square; and Anderson.
 Hughes, David, 26, Jewin Crescent.
 Hudson, John, 29, Mark Lane; President Street; and Moreton in Marsh.
 Hayward, Alfred, the younger, 47, Marchmont Street; and Brookley.
 Hinds, George, 11, Cowley Street, Westminster; and Staplehurst.
 Hore, Maurice John, Liverpool; 27, Great Russell Street.
 •Heinemann, George, York.
 Hill, William John, 28, Tavistock Place; Exeter; New Ormond Street, Myddleton Square; Alfred Street.
 Horn, Richard, 12, Upper Bedford Place; and Durham.
 Hooper, John, Newton Abbott, Devonshire; and York Road, Lambeth.
 Hair, Thomas, Kidderminster.
 Heathcote, Robert, Clapham.
 Haslewood, Edward William, 14, Sidmouth Street; and Shrewsbury.
 Jones, William, Liverpool.
 Jenkins, Richard, Swansea.
 Jay, Samuel John, 14, Sidmouth Street; and Aldersgate Street.
 Jenkyn, James, 277, Strand; and Tunbridge.
 Jennings, Thomas Robert, 2, Charles Street, Soho Square; and Evershot.
 Jefferson, Joseph, 5, Judd Place East; and Cockermouth.
 Johnson, Thomas, 9, Calthorpe Street; Lancaster; Sloane Street; Wakefield Street.
 Juckes, George, 18, Wakefield Street, Regent Square; and Shrewsbury.
 Jefferson, William Trush, 20, Highbury Terrace; and Northallerton.
 Jackson, William Windale, •Heath Cottage, Hampstead; and Park Street.
 Knowles, Thomas, Dodge Hill, Heaton Norris.
 Lanham, John Slade, Horsham.
 Langley, William Tapley, 25, East Street, Red Lion Square; and Exeter.
 Morgan, William, Shrewsbury.
 Marshall, John, 15, Golden Square; and Hampstead.
 M'Leod, Bentley, 24, De Beauvoir Square, Kingsland.
 Mackeson, Edward, Manchester Street, Gray's Inn Road.
 John Hughes, Bangor.
 John Geare, Exeter.
 William Hockin, Penzance.
 Henry Gridley, Burnham Westgate; assigned to John Wood, Falcon Square.
 Lawrence Walker, 13, King's Road, Gray's Inn.
 John Tregonwell King, Blandford.
 William Overton, Old Jewry
 Edmond Sharp, Devonshire Terrace.
 Alfred Hayward, Brookley.
 William Nathaniel Ottaway, Staplehurst.
 Allan Kaye, Liverpool; assigned to Joachim Andrade, Liverpool.
 John Atkinson, (deceased), Peterborough; assigned to William Nethersole, Essex Street.
 William Richard Bishop, Exeter.
 Abraham Story, Durham.
 William Francis D'Arcy, Newton Abbott.
 George Price Hill, Worcester; assigned to Henry Maddocks Daniel, Worcester.
 Henry Peale Bird, Lincoln's Inn Fields.
 Joshua John Peele, Shrewsbury.
 Charles Thomas Woosnam, Newtown Montgomeryshire; assigned to John Radcliff, Liverpool.
 John Jackson Price, Swansea.
 Edward Weatherall, King's Bench Walk.
 John Carnell, Tunbridge.
 Joseph Crew Jennings, Evershot; assigned to James Welch, Somerton; assigned to William Dean, Guildford Street.
 John Steel, Cockermouth; assigned to Charles Bischoff, Copthall Court.
 Thomas Mason, Lancaster.
 Thomas Harley Kough, Shrewsbury.
 Robert Burnett Walton, Northallerton; assigned to John Saunders Walton, Northallerton.
 William Newton, South Square.
 Edward Worthington, Manchester.
 Thomas Coppard, Horsham.
 Thomas Edward Drake, Exeter.
 Richard Emery, Shrewsbury.
 Richard Seaton Wright, Golden Square.
 Henry Lowe, Southampton Buildings.
 Wightwick Roberts, Lincoln's Inn Fields; assigned to Wm. Lawrence Bicknell, Lincoln's Inn Fields; assigned to George William Finch, Lincoln's Inn Fields.

Clerk's Name and Residence.

To whom attested, assigned, &c.

Miles John, 5, Charlotte Street, Bloomsbury.
Molineux, Joseph, 9, Norfolk Street, Strand;
and Lewes.
Marshall, Thomas, 8, Bouverie Street; Shef-
field; and Cardington Street.
Matthews, John, 20, Charles Street, West-
minster; Ledbury; and Eastnor.
Mantell, Alexander Houstoun, 59, Barton
Crescent; and Farringdon.
Moore, Joseph Henry, 390, Strand; Walsall;
and Surrey Street.
Mason, Edwin Farrar, Balsall Heath, near
Birmingham.
Moger, Francis Horace, 44, Stamford Street,
Surrey; and Bath.

Henry Young, Essex Street.
George Philcox Hill, Brighton.
Luke Palfreyman, Sheffield.
William Reece, Ledbury.
John William Wall, Devizes.
William Wills, Birmingham.
Samuel Danks, Birmingham.
Samuel Batchelor, Bath.

[To be continued.]

SUPERIOR COURTS.

Lord Chancellor's Court.

**IN LUNACY.—DUTY OF SOLICITORS.—RE-
TAINER.**

A solicitor, before he undertakes to defend a person against a commission of lunacy, is bound (where he has not obtained the sanction of the Court) to see that he has got a retainer from that person, and that he was competent to retain him, in order to be entitled to his costs, if he is found a lunatic. But if he acts bona fide, although he may be mistaken as to the party's competency, the Court will order his costs to be paid.

A petition was presented by Mr. Butt, a solicitor, in March last, stating that he had been employed by Mr. John Taylor to defend him against a commission of lunacy; and also upon the execution of that commission in December, 1838, and praying that he might be allowed his costs incurred in that behalf out of a fund in Court, the property of the said Taylor. From the affidavits in support of the petition, it appeared that Mr. Butt had a written retainer from John Taylor, in 1836, to file a bill in this Court against his son Richard Taylor; that in the course of the proceedings in that suit, in November, 1838, the said Richard, and his brothers, Alfred and William Taylor, presented a petition for a commission of lunacy against their father, who thereupon instructed Mr. Butt to defend him against the commission. Mr. Butt had several interviews with him. Joseph Miller, his son-in-law, and James Taylor, another son, assisted at most of these consultations. Mr. Butt conceived Mr. John Taylor to be of sound mind, and took the opinions of several eminent medical men, who were of the same opinion, and employed counsel to oppose the issuing of the commission. However, the commission was issued, after strenuous opposition, during which Mr. Taylor, out of the dividends of his stock received by him, with the sanction of the Court, paid small sums to Mr. Butt on account, and instructed him by letters and verbally, to defend him in the execution of the commission.

Mr. Butt accordingly retained counsel before the commissioners, and produced witnesses. Mr. Taylor was, however, found to be of unsound mind by twelve out of fifteen jurors, notwithstanding the evidence of five medical gentlemen of eminence that he was of sound mind.

The petition was heard in June last by the late Lord Chancellor, who observed in the course of the argument, that before he could allow the petitioner's costs, he should have an explanation how Miller and James Taylor came to intervene; because if the money paid came from them, and was not the money of the lunatic, it was thence to be inferred that Mr. Butt was acting under their authority. A solicitor who undertakes to defend a person, is first to receive a retainer, and then to satisfy himself that the party is in a state of mind competent to give him a retainer. If he acts *bona fide* in these two propositions, the Court will protect him. If he volunteers to defend the party without authority, or takes his instructions from other persons, even members of the family, he shall never get his costs out of the lunatic's property.

His Lordship, giving his judgment at the close of the argument, said,—The Court is always careful not to discourage parties from defending those against whom a commission of lunacy is applied for, because cases may occur, in which it would operate prejudicially against those who are not proper subjects for commissions. But there is another duty that the Court has to perform, which is, where there is a clear case for a commission, to take care that advantage is not taken of that proceeding for the purpose of obtaining costs, under the pretence of protecting the individual. Therefore, in all those cases the Court requires two things to be distinctly proved; first, the fact of the solicitor having been retained by the individual; and next, that the solicitor acted under that retainer from a belief that there was a fair case to be tried, and which required the interposition of professional assistance. There is another course which is often adopted where questions of doubt exist as to the state of mind of the individual. A relation comes, and asks leave of the Court to attend the commission for the

purpose of offering evidence against the evidence in support of the commission, and this Court generally gives a party that leave upon being satisfied, without coming to any conclusion as to the competency, that there is a proper case to be tried, and which requires professional assistance. Mr. Butt, who now asks the costs of opposing this commission, which have been incurred without any sanction of the Court, makes an affidavit that he entered into the detail of matters therein stated, in consequence of being informed that his claim for costs would be opposed. There was fair notice given to him, calling upon him to shew that which is requisite to entitle him to his costs. I do not say that this Court would require a solicitor to make out a case which would entitle him to recover at law, because the Court may think that, although there was a want of competency in the individual to contract the debt, yet it was a case in which it might be right, out of the lunatic's estate, to pay for his protection; but still this gentleman comes here in the character of a creditor, and he knows that a creditor—a solicitor claiming a debt against his client's estate, must show his retainer, and that the client was in a state of mind to authorize him to act under it. He states that he comes prepared to make out that case, and he goes into the early history of his connection with the lunatic, producing a written retainer in the year 1836, and he goes through his subsequent connection with the lunatic, but when he comes to the main point in question—the retainer to oppose the commission—there is an absence of all detail. He merely states that he acted for the lunatic, and that this was done with the sanction of Miller and James Taylor. It appears that Miller and James Taylor, in the correspondence between themselves, seemed to have entertained no doubt of the incompetency of this person, who was afterwards found a lunatic. It is very singular that Mr. Butt, acting with their sanction,—the words are not “under their direction”—should not have formed his opinion upon their opinions. I am without any evidence whatever of any sanction or authority which Mr. Butt received, either from the lunatic, or from Miller and James Taylor. I am told that he had none from Miller and James Taylor, but the affidavit is not positive. There is a total absence, therefore, of evidence of that which Mr. Butt must have known he had to prove before he could establish a debt against the lunatic's estate. Now I feel disposed to take a course which will do justice between the parties, without incurring unnecessary expence; but I have to consider, not only what is due to this case, but generally to the practice of the Court; and if I saw a case of surprise, or any thing suddenly started up that the petitioner had no reason to expect, I should be very much disposed to give the party an opportunity of mending the case. But I think the Court ought to be very careful in permitting parties to mend their case, when it is found that the case, as presented to the Court, does not entitle them to the order they ask. I very fre-

quently refuse to do so, for I think it is a very dangerous practice to indulge parties with that opportunity; and certainly I should not do it where I found that the party was fully aware of the case he had to prove. Here is a professional man competent to form an opinion, or to take advice as to the mode in which he ought to bring forward his case. I cannot permit a solicitor to say that he never thought it was a necessary part of his case to show he was retained. I think, therefore, I am bound to refuse the prayer of this petition, on the ground of the petitioner having failed to make out his case. It follows that the petition must be dismissed with costs; but it is competent to the party to bring another petition. If any other petition shall be presented, I should also expect very full information as to the connection of Miller and James Taylor with these payments, alleged to be made by the lunatic; because I cannot but strongly suspect, from what I see stated in the affidavits, that Mr. Butt trusted Miller and James Taylor, and not the lunatic. That, however, may be explained.

Mr. Butt presented another petition in July last, with the same prayer, in which he stated that although he was aware that his former petition would be opposed, he thought the opposition to it would be on the ground of the alleged want of competency to retain him, and not in the fact of having been retained, which he believed to have been well known by all the parties. The petition then set forth the various attendances by the petitioner, or his clerk, on the said John Taylor and his verbal instructions to them, together with several letters from him, and the opinions of several medical gentlemen affirming his competency, and that petitioner acted *bona fide* on the impression that Mr. Taylor was of sound mind. Affidavits in support of these statements were made by the petitioner and his clerk, and also by Mr. Davidson, surgeon, stating his opinion of Mr. Taylor's sanity, June 1836 to 1839, and that in the many interviews he had with him, he (Taylor) always spoke of Mr. Butt as his solicitor.

This petition came to be heard on the second day of this term.

Mr. Richards and Mr. Moore, in support of the petition.

Mr. Richards and Mr. Grove, for the committee, and

Mr. Dixon, for the next of kin of the lunatic.

The Lord Chancellor.—This is an application by the petitioner for costs of defending Mr. Taylor against a commission of lunacy. A similar petition presented to the late Lord Chancellor was dismissed, on the ground that there was no evidence of a retainer. An application was then made for a rehearing, which his Lordship refused, but said Mr. Butt was at liberty to present another petition, curing the defect in the former. That petition was presented, and Mr. Butt, in his affidavit in support of it, said he had before omitted to make an affidavit on the point of the retainer, because he thought his petition was not to be opposed on that point, but for the amount of costs. There are two questions, first, whether Mr. Taylor

gave a retainer; and secondly, whether Mr. Butt accepted it *bona fide*. As to the first, the evidence disclosed by the affidavits appears to me to be satisfactory that the retainer was given. Mr. Butt was Mr. Taylor's solicitor before the commission was prayed for, and as such he filed a bill for him in 1836. It was out of that proceeding the commission arose. Mr. Butt swears that Taylor directed him to take proceedings for opposing the commission. He entered a *caveat* against it as soon as he was informed of the petition for it. Mr. Taylor thanked him for doing so, and wrote him a letter to ask permission of the Lord Chancellor to sell out so much stock as would pay the costs of defending him against the commission. Some parts of the affidavits are distinct as to the facts which I have stated; and further, that when Mr. Butt heard of the intention of the sons to sue out the commission, he called on Mr. Taylor, who then gave him instructions to oppose it." But that fact does not depend on the affidavit of Mr. Butt, but is shewn by this letter, set out in the affidavit, "John Butt, Esq. Dear Sir, I highly approve and thank you, for what you have done for me, to put a stop to the wicked designs of my unnatural sons." There is another letter from John Taylor to Mr. Butt, set out in like manner, "My Dear Sir, As so much money will be required to pay fees to counsel in opposing the commission of lunacy against me, I request you to apply to the Lord Chancellor, for payment of 500*l.*, to meet those fees and expences, &c., by a sale of sufficient of the 2,500*l.* consols, standing in trust in the cause instituted by me against Richard. I am yours truly, John Taylor." If this were a question in a Court of law, to ascertain whether Mr. Butt was retained, this evidence would be sufficient in my opinion to satisfy a jury on that point. It is, however, said that Mr. Butt ought to have known that this person was not capable of giving a retainer, and that Mr. Butt had required a formal retainer, before he commenced the proceedings in 1836. But it may be said in answer, that they were the commencement of the professional intercourse between them, and this business arose subsequently out of those very proceedings. I am satisfied that there is sufficient evidence of a retainer. The second question is, whether Mr. Butt thought Mr. Taylor to be of sufficiently sound mind to give a retainer? Several witnesses swore at the inquisition, and among others Mr. Davidson, who long attended Taylor, swore there and also in an affidavit in support of the petition, that he was of sufficiently sound mind. Four other medical gentlemen gave like evidence before the jury, and the jury themselves differed in opinion, (three out of fifteen not agreeing in the verdict of unsoundness.) It appears to me that Mr. Butt exercised a fair discretion, and he ought to be paid his costs out of the fund in Court.

In re Taylor, a Lunatic, At Westminster, June 4th, and Nov. 3d and 16th, 1841.

Vice Chancellor of England's Court.

PRACTICE.—AMENDMENT.—COSTS.

Where a plaintiff, after the defendant's answer is put in, so alters the frame of his bill, as to make an entirely new case, and a material portion of the answer, as well as of the bill is thus rendered useless, the Court will order him to reimburse the defendant the costs incurred by him, for so much of the proceedings as is thus rendered useless. Secus, if the amendments are occasioned by statements in the answer of circumstances then first known to the plaintiff.

The bill in this case was filed for the specific performance of an alleged agreement, between the plaintiff and defendant, for the sale of an estate, which had been mortgaged by the defendant to the plaintiff, and it also prayed in the alternative, for a foreclosure of the mortgage. In answer to the bill, the defendant entered into very long statements, and set forth numerous letters, for the purpose of shewing that the alleged contract was never complete, and that if complete, it had been subsequently abandoned, with the full concurrence of the plaintiff. The plaintiff thereupon amended his bill, and struck out all those parts which related to the agreement, and also the prayer for specific performance, and made it simply a bill for foreclosure, and the defendant in consequence now moved the Court that the plaintiff should pay him the costs of so much of the bill as had been struck out by the amendments, and of so much of the answer as had been rendered unnecessary by them.

Bethell and Sidebottom, in support of the motion stated, that the course pursued by the plaintiff, had rendered it necessary for the defendant to put in a long answer, which was now rendered almost useless. It was imperative upon the defendant to make the present application, for the purpose of getting reimbursed the costs thus improperly occasioned, because the Court was debarred from giving any relief respecting them at the hearing. *Bullock v. Perkins*, 1 Dick. 110. It was clear that if a plaintiff so alters the frame of his original bill by amendment, as to make an entirely new case, he was bound to pay the costs of so much of the original proceedings, as were rendered useless by his amendments. *Mavor v. Dry*, 2 S. & S. 113; and in this case there was the plaintiff's own admission of the improper charges respecting the alleged agreement in his original bill, by his having struck them all out on his amending.

Rolt, *contra*, said, that the conduct of the defendant had rendered it necessary for the plaintiff to act as he had done, for previous to the institution of the suit, the defendant had served a notice, requiring performance of the agreement, and yet by his answer he altogether repudiated it. The plaintiff being only desirous of getting rid of a troublesome mortgagor, thought it more prudent, on seeing the answer, to strike out all the passages in the bill relating to the agreement, and to ask merely for a foreclosure. Under such circumstances, the

amendments having become necessary through the improper objections raised by the defendant, there was no ground for the present application, and he cited *Monch v. Tunkerville*, recently decided at the Rolls.

The Vice Chancellor said, he thought the defendant was entitled to what he asked, because if the plaintiff thought proper to enter into particulars for the purpose of supporting an agreement which he afterwards abandoned, he must abide by the consequences. If the defendant in his answer had stated circumstances, then for the first time known to the plaintiff, the case would have been different; but it appeared that he was well aware of all the circumstances, and if he chose to make an experiment for the purpose of ascertaining whether it would be better for him to seek a specific performance, or a foreclosure, the defendant ought to be indemnified.

Order according to notice of motion.—*Dyson v. Morris*, Nov. 10th, 1841.

Queen's Bench.

[Before the four Judges.]

BILL OF EXCHANGE.—EVIDENCE.—PLEADING.

Where the defendant pleaded specially to a count on a bill of exchange, and that plea was demurred to, and judgment given for the plaintiff: Held, that on going down to trial on the rest of the record, the plaintiff was not bound to produce the bill, but might without its production recover the amount claimed in the declaration.

Assumpsit on a bill of exchange, by drawer against acceptor. The first count was on the bill, and there was a second count on an account stated. There was a special plea to the first count, and a demurrer to that plea. Judgment on that demurrer was given for the plaintiff. The general issue was pleaded to the account stated. At the trial of the cause at the last sittings at Westminster before Lord Denman, the bill was not produced, on which the defendant's counsel insisted that the verdict on the first count must be for nominal damages only. The learned Judge, however, was of opinion, that the cause of action as stated on the first count must now be considered to be admitted as there stated, and therefore directed a verdict for the plaintiff, for the sum of 1,332*l.*, the full amount claimed of the bill, with interest. There was a verdict for the defendant on the account stated, no evidence whatever being adduced in support of that count.

Wordsworth moved for a rule to shew cause why the verdict for 1,332*l.* should not be set aside and a verdict entered for nominal damages only on the first count of the declaration. He cited *Marshall v. Griffin*.^a That was an action of assumpsit. The first four counts were on bills of exchange; demurrer as to the first and second, general issue as to the residue. At the trial before Abbott, C. J., only two bills were produced and proved. It was contended for the defendant, that these two bills must be

applied to the counts which had been demurred to, and damages contingently assessed on them; and as only two had been produced, the defendant would be entitled to a verdict on the other counts. But Abbott, C. J., observed, that "the reason for producing the bill on an inquiry after judgment by default, is that the jury may see whether there is any payment endorsed upon it. But on such enquiry if no note is produced, the plaintiff is entitled to nominal damages. And so the plaintiff here is entitled to a verdict for the amount of the bills proved, of the counts to which the defendant has pleaded, and to *1s.* damages on those demurred to. The defendant by his demurrer having admitted the existence of the bills declared on, and put himself to the judgment of the Court, as to his legal liability upon them." The rule laid down in that case must govern the present. The jury ought to be satisfied by the production of the bill that there has been no payment on it. [Mr. Justice Coleridge.—That is not required now; payment must be pleaded.] That does not put an end to the necessity of producing the bill, to shew that there has been no payment made upon it, so as to reduce the plaintiff's demand, or to show that it is the same bill as that which has been declared upon. In *Snowden v. Thomas*,^b it was held, that a note of hand must be produced on the execution of a writ of inquiry. Besides, it is further necessary to produce the bill, in order to see that the stamp laws have been complied with.

Lord Denman, C. J.—I have not the least doubt on the practice. The case cited is not in point, for there, the plaintiff did not ask to have all that was admitted on the face of the declaration, but was satisfied to have nominal damages on two of the bills. If the old rule prevails, of which I am by no means convinced, how can it be necessary to produce the bill where payment has not been pleaded? As to the stamp, it would be an abuse for the Court to require under all circumstances the production of a bill in order to see whether there was one penny less on the stamp than the law required.

Rule refused.

Mr. Serjt. Bompas, *amicus curiæ*, said, that the same rule had just been laid down in a case in the Court of Common Pleas. *Lane v. Mullins*, M. T. 1841. Q. B. F. J.

PRACTICE.—PAPER BOOKS.

The Court will not allow one party to take a case out of its regular turn, and pray judgment under the rule H. T., 4 W. 4, No. 7, unless he has strictly followed the words of that rule.

Demurrer to a declaration. On one of the days appointed for taking the special paper, Mr. Tomlinson appeared and prayed judgment for the plaintiff as in a case which was not to be argued; no one appeared on the other side. In this case the defendant had not delivered

^a Moo. & Ryan, 41.

^b 2 Sir W. Bl. 748.

his paper books pursuant to the rule, H. T. 4 W. 4, No. 7. The plaintiff had some time afterwards delivered the paper books, but had not yet been paid for them, and he now moved for the judgment of the Court in the absence of the other party, as by the rule of Court the other side could not now be heard.

Mr. Justice Coleridge.—The words of the rule are, "and in default by either party, the other party may on the day following deliver such copies as ought to have been so delivered by the party making default."

Mr. Tomlinson.—But the party delivering in default of the other party, is not bound to do so on the day following that of the default committed by his adversary. The delay of a few days prevents sharp practice, and the party who abstains from taking an immediate advantage of his adversary is not finally, and on that account alone, to be deprived of the benefit to which he is otherwise entitled.

Per Cur.—A party not strictly within the words of the rule, cannot take advantage of it to pray judgment in this manner. The cause must stand in the paper.

Anonymous. M. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

RE-ADMISSION OF ATTORNEY.—OMISSION TO TAKE OUT CERTIFICATE.

If an attorney has omitted to take out his certificate, in consequence of the negligence of his agent, he may be re-admitted, although he practised during the uncertificated period, without fine, on payment of the duty due on the certificate omitted to be taken out, and without the usual notices.

Gray moved for the re-admission of an attorney, without giving the usual notices. It was sworn, that in 1812, the attorney was duly admitted, and continued regularly to take out his annual certificate for every year, during the period which had elapsed since his admission, with the exception of the year 1837. The person acting for him in procuring his certificate annually, was his town agent. By some accident or neglect, the certificate for that period was omitted to be taken out. During the uncertificated period, he continued to practise, being quite unaware of the omission. It was only lately, when he had to make some enquiries at the Faculty Office, that the mistake was discovered. He had come promptly to the Court. It was submitted, that as the omission to take out the certificate was innocent on his part, the Court would allow him to be re-admitted, without giving the usual notices required by the rule of Court, as well as without fine.

Patteson, J.—I think that, under the circumstances, the attorney may be re-admitted without giving the usual notices and without fine, but on payment of the certificate duty for the uncertificated period.

Rule accordingly.—*Ex parte*,—M. T. 1841. Q. B. P. C.

RULE TO COMPUTE.—SERVICE OF RULE.—ATTORNEY.—HOUSEKEEPER.

Service of a rule to compute may be effected on a housekeeper of the defendant's attorney at his chambers.

F. Thompson moved to make absolute a rule nisi to compute, on affidavit of service. The affidavit stated a service on the housekeeper of the defendant's attorney, at the chambers of that person. It was submitted that this was a sufficient service.

Patteson, J.—I think that is a sufficient service. You may have your rule absolute.

Rule absolute.—*Scarborough v. Copeland*, M. T. 1841. Q. B. P. C.

SERVICE IN EJECTMENT.—HUSBAND AND WIFE.

If a declaration in ejectment has been served on a woman professing to be the tenant's wife, on the premises, it is sufficient for judgment against the casual ejector, if it is believed that her statement is true.

This was an action of ejectment. The declaration had been served at the premises in question, on a person who stated herself to be the wife of the tenant in possession. It was not known whether the person making the statement was the wife or not of the tenant, but the deponent, who had effected the service, swore that he believed the statement to be true.

Byles now applied for a rule for judgment against the casual ejector. It was submitted that the service in question was sufficient to entitle the lessor of the plaintiff to a rule for judgment.

Patteson, J., granted the rule.

Rule granted.—*Doe d. Grange v. Roe*, M. T. 1841. Q. B. P. C.

Common Pleas.

RULE TO COMPUTE IN COMMON PLEAS.—AFFIDAVIT.

The affidavit in support of an application for a rule to compute principal and interest on a bill of exchange, need not in the C. P., state the amount of the bill, the affidavit itself in that Court being unnecessary.

Manning, Serjt., moved for a rule to compute principal and interest on a bill of exchange. The affidavit with which he was furnished in support of the motion did not state the amount of the bill.

Tindal, C. J.—The officer informs us, that no affidavit is necessary in this Court; your affidavit is therefore sufficient as far as it goes. Rule granted. *Bridport v. Jones*, M. T. 1841. C. P.

SERVICE IN EJECTMENT.

Service on the widow of the late tenant, who held the premises by lease, who is administratrix of her deceased husband, and to whom it is sworn that it is believed that the interest of the deceased passed, and also upon the person in possession of the pre-

mises, is sufficient to entitle the lessor of the plaintiff to judgment against the casual ejector in an action of ejectment for a forfeiture.

Talfourd, Serjt., moved for judgment against the casual ejector. The premises were held by lease, by a person deceased, and the ejectment was commenced on the ground of forfeiture. Service had been effected upon the widow of the lessee, who was administratrix, and to whom it was sworn that it was believed that the interest of the deceased passed, and also upon the person in possession of the premises.

Per Curiam.—Take a rule.

Doe d. Pamphilon v. Roe, M. T. 1841. C. P.

DISTRINGAS.—AFFIDAVIT.—RESIDENCE OF DEFENDANT,

The affidavit in support of a motion for a distringas must not only state the proper number of calls and appointments to have been made at the defendant's house, but also where the house is situated.

Talfourd, Serjt., moved for a distringas. The affidavit stated three calls to have been made at the defendant's house, with a view to the service of process, but did not state where the house was situated.

Per Curiam.—That will not do. The locality of the house must be stated.

Rule refused.^a *Anon*, M. T. 1841. C. P.

Court of Exchequer.

TRIAL.—BOROUGH COURT.—NOTICE.—WAIVER.

A Judge has power to send a cause to be tried by a Borough Jury, though the venue is laid in the county.

What is a waiver of a defective notice of trial.

A rule for setting aside a writ of trial was obtained on the grounds, 1. that the notice did not specify the day of trial; 2. that the writ having been directed to the Judge of the Borough Court, a jury of the borough, and not of the county where the venue was laid, had tried the cause.

Mr. S. Flood shewed cause. The 1st objection had been waived by the defendant's taking out a summons to set aside the writ of trial. 2d. That the judge was authorized to direct a trial by a Borough Court within the county.

Mr. Humphrey, contrâ.

The Court.—The first objection had been waived; and with regard to the second, the judge clearly had power under the 3 & 4 W. 4, c. 42, s. 17, to send the cause to be tried by a Borough jury.

Rule discharged with costs. — *Farmer v. Mumford*, M. T., 20th Nov. 1841.—Exch.

^a In a case of *Bradlee v. Gustard*, a similar motion was made in the Bail Court, before *Putnam, J.*, by *K. Dowling*, where the same defect appeared, and the rule was on that ground refused.

FIERI FACIAS.—INSOLVENT DEBTOR.

The property of an insolvent debtor cannot be taken in execution.

A rule nisi had been granted to set aside a writ of *fieri facias*, on the ground that the defendant had taken the benefit of the Insolvent Debtors' Act, and that the 1 & 2 Vict. c. 110, protected the property of the insolvent debtor from execution.

Mr. Henderson shewed cause; but

The Court held that the writ was irregular, being contrary to the 91st. section of the statute.^a

Rule absolute.—*Rayner v. Jones*, M. T., 20th Nov. 1841.—Exch.

CHANCERY SITTINGS.

After Michaelmas Term, 1841.

Before the Master of the Rolls.

AT THE ROLLS.

Thursday .. Dec. 2 Motions.

Friday	3	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	4	
Monday	6	
Tuesday	7	
Wednesday ..	8	

Thursday

Friday	10	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	11	
Monday	13	
Tuesday	14	
Wednesday ..	15	

Thursday

Friday	17	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday	18	
Monday	20	

Tuesday

Wednesday

Short and Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.

COMMON LAW SITTINGS.

After Michaelmas Term, 1841.

Queen's Bench.

MIDDLESEX.

Friday ... Nov. 26	} Common Juries.
and daily to Tuesday .. Nov. 30	
Wednesday Dec. 1	} Special Juries.
and daily to Monday .. Dec. 6	

LONDON.

Thursday .. Dec. 9	} Common Juries.
(Adj. day).	

^a By the 61st section, warrants of attorney and cognovits are not to be acted upon against the insolvent's goods after his imprisonment.

Common Pleas.

No Trials yet appointed.

Court of Exchequer.

Michaelmas Term, 5th Victoria.

THIS Court, will, on Friday the 26th day of November instant hold sittings, and proceed in disposing of the business pending in the *Special Paper*, and *New Trial Paper*, on the said 26th day of November, and on the following day, that is to say, Saturday the 27th, and also on Wednesday the 1st day of December next, and the three following days, that is to say, Thursday the 2d, Friday the 3d, and Saturday the 4th days of December.

Read in open Court.	ABINGER.
17th Nov. 1841.	J. PARKE.
Stephen Richards, Master.	J. GURNEY.
	R. M. HOLFE.

Exchequer of Pleas.

MIDDLESEX.

Friday Nov. 26	} Common Juries.
Saturday 27	
Monday 29	} Revenue Causes and Com Juries.
Tuesday 30	
Wednesday Dec. 1	} Common Juries.
Thursday 2	
Friday 3	} Special and Com. Juries.
Saturday 4	

LONDON.

Saturday Nov. 27	To adjourn only.
Monday ... Dec. 6	Adj. Day. Com. Juries.
Tuesday 7	} Common Juries.
Wednesday 8	
Thursday 9	
Friday 10	
Saturday 11	} Special and Com. Juries.
Monday 13	
Tuesday 14	
Wednesday 15	
Thursday 16	
Friday 17	
Saturday 18	} Common Juries.
Monday 20	

The Court will sit at half-past nine o'clock.

CENTRAL CRIMINAL COURT.

THE following days have been appointed for holding the Sessions for the Jurisdiction of the Central Criminal Court, for one year.

1841.

Monday	29th November.
Monday	13th December.

1842.

Monday	3d January.
Monday	31st January.
Monday	28th February.
Monday	4th April.
Monday	9th May.

Monday	13th June.
Monday	4th July.
Monday	22d August.
Monday	19th September.
Monday	24th October.

JOHN CLARK,
Clerk of the said Court.

THE EDITOR'S LETTER BOX.

In the case of *Petier v. Booth*, reported p. 44, *ante*, it is stated by counsel, that "the jurors remained absent till half past twelve, when they brought in a verdict for the defendant." The Court on refusing the rule, said, "the defendant having, under these circumstances, taken his chance of a verdict after twelve o'clock at night, shall not now be allowed to set it aside, when he finds that it is *not in his favour*." A correspondent remarks, that if the statement of the Court is correct, *plaintiff* should be read instead of defendant; if the statement of counsel is the right one, then *vice versa*.

We regret that we have been unable to find room for many valuable letters and suggestions. We answered the inquiry of A. Z., in our number of the 9th October last.

The communications of "A Law Student," Z.; and H. have been received.

We are obliged by the communication from Paris, of which we shall avail ourselves.

Some information for the *Legal Almanac* arrived too late for insertion.

It is obvious, as D. E. G. observes, that the three years' arrears of certificate duty, to be paid in the case reported at p. 46, *ante*, was 24l.

The letters of G.; H. H. P.; "A Student," and J. R., shall be attended to.

A correspondent, who will not be of age until the commencement of October 1842, cannot give his notices for Trinity Term in that year, so as to be examined in that term, and admitted and inrolled in the Michaelmas term following, without leave of the Court under special circumstances.

We have obtained a report of the case of *Whitmore v. Robertson*, in which the Court of Exchequer decided that an execution on a judgment on a warrant of attorney, levied before a fiat, but not paid over until after the fiat, was void, and that the assignees were entitled to the money. We shall insert the report next week.

The case to which we referred at p. 48, *ante*, where the late Chancellor decided that equitable mortgages by deposit of title deeds, may be defeated by a simple contract creditor, afterwards suing the debtor to judgment, and lodging an elegit, has created great confusion among the country bankers, who held these equitable mortgages.

We think our "Old Bristol Subscriber," cannot be prejudiced by the withdrawal of an admission without leave of a judge, on special grounds, and on the terms of paying costs. This, at least, *ought* to be the practice, and we have no doubt it is so.

The Legal Observer.

MONTHLY RECORD FOR NOVEMBER, 1841.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

REMARKABLE TRIALS.

ALEXANDER M'LEOD FOR MURDER.

ACCORDING to our custom of recording the most remarkable trials in all parts of the world, we now add to our Collection that of Mr. Alexander M'Leod, who was tried at Utica, in the United States of America, for the alleged murder of Durfee, an American. The trial commenced on the 4th, and ended on the 12th October last. The facts on which the charge was founded are sufficiently stated in the able summing up of Mr. Justice Gridley. Omitting the introductory remarks, the following is a report of the address to the jury.

The first question is, has any murder been committed? And the second question is, is the prisoner at the bar guilty of that murder?

On the first question, gentlemen, the Supreme Court of this state, as you have already learned during the progress of the trial, have decided. Their authority is binding on you and me. We are sitting here to dispense justice in the Circuit Court, and must be governed by the decision of that superior tribunal which has sent down this issue to be tried here. That is no longer an open question, but an adjudicated one, and with it you have no concern.

The circumstances out of which the indictment originated, are briefly these:—In December, 1837, a body of Canadian refugees and American citizens occupied Navy Island, fortified themselves there, and opened a cannonade upon the Canadian main shore, where some 2500 or 3000 men were assembled to protect their territory. Aid was afforded to these occupants of Navy Island by certain individuals in Buffalo; and one William Wells, the owner of the steam-boat *Caroline*, for the purpose of promoting his own interests, as he swears before you, had the steam-boat cut out from the ice where it lay in Buffalo creek, and on the morning of the 29th December, the fatal day, that boat made her first trip from Buffalo to Schlosser, touching at Navy Island; and

that after that, on the same day, she made two trips to Navy Island from Schlosser; that it was instrumental in conveying armed men—arms—provisions, and one piece of ordnance to Navy Island. Further than this it does not appear that the *Caroline* was instrumental in promoting the interests of the occupants of Navy Island. Now, the colonial association in Canada saw fit to regard this boat as a portion of the armament of the insurgents, and resolved to destroy her. Sir Allan M'Nab, the commander of the provincial forces at Chippewa, ordered volunteers to embark in boats, of which five reached the *Caroline*, and from them she was boarded, whilst her peaceful occupants were asleep in her berths; and with cutlasses, boarding pikes, and fire-arms, the attacking party chased the persons on board, wounding some, killing one, and whether others experienced the same fate we know not, and then, having set fire to the boat, the attacking party sent her over the Falls. This is a brief history of the transaction, so far as it is necessary for you to consider it for the purpose of understanding and disposing of this case.

The acts I have described are held by the prisoner's counsel to have been excused in the individual performing them for the reasons—first, because those acts were authorized; and, secondly, because done in self-defence; and again, because the whole transaction has already become the subject of recognition between the two governments, so as to deprive this Court of jurisdiction over the offence. These arguments have been laid before the Supreme Court, and that Court, after great research and deliberate consideration, pronounced that this act of the killing of Durfee, although performed in the prosecution of an enterprise like that I have already described, was murder; and it follows then, gentlemen, that all who were engaged in it are guilty of the same offence; and it is not necessary that the arm of M'Leod should have struck the fatal blow to render him guilty. Enough that he was engaged with others in that enterprise. This question, then, is to be excluded from your consideration. It has, it is true, been dwelt on by counsel on both sides in their opening addresses, and during the progress of

the trial. I refer to it, however, to inform you that it has been already adjudicated on, and is set at rest.

Then comes the question, the important question on which you are to pass—is *Alexander M'Leod guilty of that murder?* The counsel for the people have presented many witnesses before you, the tendency of whose testimony has been to show that the prisoner is guilty; and in order, gentlemen, that you may understand and appreciate this testimony, I shall briefly place it in review before you. I shall divide it into two classes—the first branch embracing the *direct and circumstantial evidence*, other than that arising from confessions connecting the prisoner with this charge;—the second class of evidence will consist entirely of *confessions*.

The first witness, gentlemen, who has testified before you, is *Gilman Appleby*. He is the only witness who was on board the boat at the time of the attack. He was the captain of the boat—he slept in the gentlemen's cabin—he was awoke a little before midnight, as he thinks, by information that there were boats approaching; he rose, and, partially dressed, made his way up the stairs, till he found his further progress arrested; he retreated, but again returned, and had opened the door about a foot, when it was violently pushed open by some one outside, who then made a plunge at him with a sword, which glanced along two of his vest buttons, and struck against the metal button of his pantaloons; he was considerably excited, but in that momentary glance he saw the features of the man thus attacking him, and his impression then was that the individual was Alexander M'Leod; but, with all commendable prudence and caution—for which I honour him—this witness says that amid the agitation of the moment, and in that hasty glance which passed in the twinkling of an eye, he cannot say that it was M'Leod; he had once before seen the prisoner at Buffalo, and it struck him at the time that his appearance was similar to that of the individual who thrust at him, but it was only one hurried glance, and he immediately replied to the question of counsel, when on the stand here, that he could not say that it was Alexander M'Leod.

The next witness is *Samuel Drown*. He resided at Chippewa, and was engaged in tending the bar for one Smith, who kept a tavern there, and he says that he went up on the evening of this transaction, to what was called the "Cut," and up the Niagara river—that he was at the entrance of this "cut"—that he was at the beacon light, saw the boats passing into the "cut," and then he thinks he recognized M'Leod amongst the party embarking in the boats; it was dark; but the witness expressed the certainty of his belief that he then and there saw the prisoner. He says, he went from there to Davis's tavern, where a portion of these persons came, and there, by a light which shone from within the bar room, or by a light out on the "stoop," although he cannot remember any light hanging out there, he

professes then to have seen again Alexander M'Leod. He then says, that next morning, between daylight and sunrise, he heard some of the men in the tavern talking of M'Leod's being wounded, and was over on the opposite "stoop;" the witness looked across, he said, and then thought he again recognized M'Leod. He says he went over to see whether M'Leod was wounded. He saw no one apparently wounded, and did not see M'Leod. He was then inquired of in relation to the degree of certainty with which he could say that the man whom he saw was M'Leod, and he said in reply, that "He saw a man whom he called M'Leod." Another question was put to him, and he then said, "I mean that I am as sure it was M'Leod, as that he now sits before me." This is, gentlemen, his testimony. He submitted to a long cross-examination, and how far it went to shake your confidence in his statements, it is your province, gentlemen, to decide. There is, however, one consideration, which I will submit to you; it is this—that when you are to judge of the credit to be attached to the testimony of a witness, it is right and proper that you should observe his manner on the stand, the degree of intelligence which he exhibits, the amount of power of observation and accuracy of recollection; and having done so, you are to decide whether his answers satisfy you that he is honest, and in the whole, whether his statements are of such a character, when taken all in all, that you can rely upon them; and if not sufficient to satisfy you altogether, you must decide what degree of confidence you will repose in his testimony, and that you will bestow on it, and no more. It is argued by the prisoner's counsel that the degree of darkness which prevailed there, and as testified to, was such as made it exceedingly rash for this witness to pronounce so confidently that he was able to recognize M'Leod as well there as here to-day. It is also argued that he stands before you impeached as to his character for truth and veracity, and to sustain this impeachment witnesses have been called and have appeared before you. One Mr. Bates has testified that he lives near Canandaigua, near the residence of this witness, and he says, that he heard him speaking on this subject, I think at some former period when subpoenaed; and among other things he said he knew nothing in reference to this matter that could do M'Leod any harm or any good. The statement which he makes of what he said is somewhat qualified. It is remarked, on the other hand, that witnesses who are subpoenaed frequently make careless observations, and that this person, being a poor man, might wish to avoid attendance on this trial. This is very true that persons often make careless remarks, and had Drown made such a statement in presence of any one who could have excused him from attending here, then the plea of counsel would have been entitled to greater regard from you. If, in truth, the facts which he has here stated were remembered by him at that time, then they were all facts material, and he could not have said consistently with truth,

that he knew nothing of sufficient importance to harm or benefit the prisoner. This, gentlemen, is the extent of that individual's testimony. You are to take it into your consideration, and are to exercise your judgment in reference to the effect it may have in detracting from your confidence in the evidence of Drown. I may add, that in order to restore your confidence in Drown, Bates was questioned, and in reply stated that that individual's character for veracity had latterly improved; that formerly he had been an intemperate man, but was now reformed.

The next witness, gentlemen, is *Isaac P. Corson*. He is a native of this state, a carpenter by trade; he had been at Chippewa in prosecution of his business; he testifies that he was at Macklin's store on the afternoon of the 29th of December, 1837; that he there saw Mozier, Usher, and the prisoner; that about 9 o'clock he saw the prisoner passing out of Davis's; that he also saw him next morning at sunrise with others on the "stoop"—that he was at some little distance—that he could see only his head and shoulders—that he was telling of his exploits, saying that he had killed a d—d Yankee—that he saw him again two or three days afterwards—that he then said he would like to be on another such expedition and burn Buffalo. This is an analysis of this witness's testimony, which is spread over several pages of my minutes. You will recollect, gentleman, this witness's cross-examination, and will judge how far that weakened the force of the statements made by him on his direct examination. There is, however, one point which demands your particular attention. This witness was inquired of as to who else were present when he heard M'Leod flourishing and boasting of having killed a Yankee. At first the witness could not recollect any one. At length he said he could name one Caswell. He was then asked whether he was present at this trial, and he said, yes. He was then asked when it first occurred to him that he saw Caswell there that morning, and he confessed that it was that very moment. The cross-examination was protracted, and in the course of it, it came out that he had conversed with Caswell as late as the morning of the day on which he testified on the stand before you. That they talked of the affair of the Caroline, and that Caswell informed him that he was there that morning. It may be that was all true, and that it really did not occur to him that Caswell was there till the moment that the question was put to him. But you are to judge of that.

The next witness is *Charles Parke*, bar-keeper at Davis's tavern. He testifies that the prisoner went to bed at Davis's tavern early in the day, and got up between eight and nine o'clock in the evening; that a gentleman called for him, and he went out; that half an hour or three quarters of an hour afterwards he saw him between Davis's and the Chippewa-creek; that a good many people were on the road; that M'Leod went into one of the boats; that at about sunrise next morning he saw him at

Davis's tavern; that he again saw him a few days afterwards in the officers' mess-room, and there heard him say that he had killed a d—d Yankee, or something like that. At the close of his examination this witness was asked, whether he could say with considerable certainty that he saw M'Leod at the "cut," and he said he could. He was asked further, and he said, he had no doubt of it. He also stated that it was pretty dark that night, and testifies also to other things on account of which the counsel for the prisoner contends you should take his testimony with considerable grains of allowance. He testifies as to his knowledge of M'Leod, and among other things, he says that he once went to see him in company with a brother-in-law, whom he accompanied as a witness in case his evidence should be necessary. That money was paid to M'Leod; but although he went as a witness, he cannot recollect the amount of the money paid on the occasion. It is also argued that this witness tells a very extraordinary story in relation to the manner in which he had been induced to appear here; that he started from home to make certain purchases in Buffalo; that he suspected some one who accosted him on the way with the desire of arresting him to insure his attendance as a witness on the trial; that he returned home; again set out, and was arrested in Buffalo before he had time to transact any business; that further, he was ignorant of the law of this state, and was so frightened by the alleged representations of Mr. Hawley, that he (Mr. Hawley) had power to enforce his attendance here, that he consented to come. All this may or may not be the truth. This witness also testifies that he was solicited to come here by persons religiously opposed to bearing arms. Now, gentlemen, I have no opinion to express on these matters. You are the sole judges of this testimony, and with you I leave it.

The next witness is *Caswell*,—he whom Corson spoke of, and he testifies in substance that he also saw M'Leod that morning at Davis's tavern.

Then comes *Quimby*; he is the witness from Pennsylvania. He testifies that he resided some two miles from Chippewa. That he was there on the 29th with a load of hay, which he sold to the Government. That he did not get paid for it at the time of the sale. That he remained till evening, and in the course of the evening saw the prisoner at Davis's tavern. That he remained there from nine till ten o'clock. That he then started for home. Stopped at Pettis's about a mile off, all night. That he then turned back, and was again in Chippewa between daylight and sunrise. That he went back to get payment for his hay at the Commissary's office. That he was going there when he saw M'Leod. That he saw him on the "ridge," and that he there heard him boast of his exploits on the Caroline, and heard him declare that there was the blood of a Yankee on his sleeve. He is questioned then as to whether he expected to receive payment for his hay at that early

hour, and whether there were any persons in the office, and he said there were not; that he wished to be there in good season, but did not, after all, get paid, and finally went home.

But, gentlemen, it seems, according to the testimony of Mr. Lott, of Lottsville, Philadelphia, that on one occasion this Quimby came with another person for the purpose of making an affidavit before Mr. Lott, who is a magistrate, and that that gentleman refused to take the affidavit, because Quimby was unworthy of credit; that he went to another magistrate, by whom the affidavit was taken and sent on. Lott says, that he resides in Lottsville; that the reputation of the witness Quimby, while resident there, was very bad; that he was not to be believed on oath; and that on informing the prisoner's counsel of his character, he (Mr. Lott) had no private motives of malice or revenge to gratify. Now, it is said, and it is true, that ordinarily a witness, to invalidate the testimony of another, should be called from the neighbourhood. But you are the arbiters of this question, and in your hands I leave it.

The evidence of *Seth Hunnan*, for whatever it is worth, is also before you. When examined before, he said M'Leod was not seen by him that morning; he now swears he was. You will give this the credit you deem it deserves.

Justice F. T. Stevens is then called and sworn. He testifies that he was present on the night in question, and that he saw three boats go out and return, and he distinctly and positively swears that he saw M'Leod disembark by the beacon light. That is a statement which is not contradicted by any other witness, and is, on the contrary hostile to the statements of all the other witnesses on both sides. It cannot be true. He was dismissed from the stand without cross-examination. He has testified to what is a deliberate falsehood—a falsehood for which the palliating plea of the probability of mistake cannot be offered.

Leonard Anson is the next witness. He swears that he saw M'Leod at the bar in Davis' tavern; that there were others there who took part in the expedition against the Caroline, each boasting as to who had committed the greatest crime; that there he saw M'Leod draw out his pistol, and declare that he had killed a d—d Yankee, and that he pointed out the blood on the stock of the pistol. This, it is contended on the part of the prisoner, is an improbable story—that he could not have seen the blood on the pistol; and other considerations have been submitted to you in relation to the testimony of this individual which it is unnecessary for me to dwell upon now. You are the judges of their weight, and the attention which should be given them. These are, I believe, the only witnesses belonging to the first class in evidence. That is, these are the only witnesses who testify of their own knowledge as to facts unallied with confessions which go to connect M'Leod with this enterprise. And the prisoner's counsel contend that some of these witnesses have been impeached, and that others have appeared in very doubtful circumstances; that the darkness of the night was a good rea-

son why no very great confidence should be placed in the statements of those testifying so positively that they recognized M'Leod with such certainty; and that which they have thus proved is enough to throw some shade of suspicion on the whole. That is the view taken of it by the prisoner's counsel. Whilst, on the other hand, the counsel for the prosecution insist that it is a mass of testimony which you must believe, and which, believing, you cannot doubt the fact of the prisoner's guilt.

The other branch of the evidence is that contained in the *confessions of the prisoner*; and there is a principle of law, applicable to that description of evidence, to which the counsel for the prisoner has directed your attention—that confessions are in themselves the most surprising kind of evidence, easily fabricated, and difficult to be disproved, liable to be mistaken, partially heard, partially remembered, and unless corroborated by other testimony, the rule adopted by the elementary writers and sanctioned by the most distinguished jurists, is, that they are the most unsafe description of testimony. Nevertheless, they are competent to be weighed, judged of, and passed upon like all other evidence in the case.

I therefore, gentlemen, call your attention to the evidence of *Henry Byers*, and I would admonish you that one rule by which you are to test the declarations of witnesses is that you are to see whether they are probable—like what men in like circumstances would do. He testifies that on one occasion, whilst he was passing Niagara Falls, he stopped at a tavern and saw M'Leod with a number of others; that M'Leod was accosted by name by another of the party; that he boasted that he had killed one d—d Yankee, or rebel, and that he compelled the witness to "treat" the party. You will judge of the credibility of this witness's story; but there is one thing he said which has not been noticed by any one of the counsel, and which may aid you in passing judgment on his evidence; he said that he marked the features of M'Leod well, as he determined to use him in a similar manner, if ever he got him on this side of the frontier.

The next witness is *Calvin Wilson*. He is the keeper of a ferry at Youngstown, in Canada, and he says that a few days after the destruction of the Caroline he went over to Canada; went into a house where was a person of the name of Rayncock, M'Leod, and others, whom he named, who had been actors in that transaction, and that M'Leod said one of the d—d rebels got shot on the wharf. This witness has been cross examined at length, and confessed that though a poor man with a family, he had given 200 dollars to the "patriot" cause, and declined answering whether or not he had harboured the notorious Lett.

To rebut his testimony, a respectable inhabitant of the town of Niagara, named *Hamilton*, was produced, and testified that he well knew Rayncock, and that that individual was absent in England at the time specified by Wilson.

The next witness worthy of notice is *Timothy Wheaton*. He was called by permission after the prosecution rested, the Attorney General supposing that there had been a reservation in favour of this witness. He deposes that about a year before he had gone from Whilby, Canada, where he lived, to Niagara. Was near the ferry. Saw M'Leod coming from the water side, and the witness remarked to him that the sentinels had a hard time of it; that they then talked of the Navy islanders, and about their number; that M'Leod said they never would have the Caroline there again, and added that he was the second or third man who boarded her; that then some person, a stranger to witness, interrupted the conversation by taking M'Leod off; that he (witness) turned from the ferry, recollecting he had not a pass, and went back to the town.

Gentlemen, you are carefully to examine this evidence, and decide according to your conscientious conviction of the truth as it really is. If you believe this evidence, notwithstanding some objections to it, and notwithstanding some deductions which are to be made—if you believe that it does after all present to you an amount of evidence which is sufficient to call up the prisoner to answer, then you are to take into consideration the defence opened before you. And it is undeniable that on looking at this mass of evidence there is much of it that appears questionable, and much that is not powerfully attacked and that does bear very hard on the question of the prisoner's guilt.

But passing from this, you are then to look at the *prisoner's side*, because it is the right of every man put on trial here to present his witnesses, have them examined, and if he succeed in establishing the defence, to have the full benefit of it. That defence, gentlemen, is what is called an *alibi*. It is, in other words, that he had no part or lot—no sort of participation in this enterprise. And this, after the disposal of the first question already passed upon, is the only other ground of defence that exists. And in my judgment, no degree of suspicion should attach to it as an original defence, because it is, as I have just said, the only defence that remains for the prisoner at the bar. If he were, in truth, upon the expedition, then is he guilty, and so you must pronounce him. But, gentlemen, if he was at that time five or six or seven miles distant—if he had no participation in that enterprise, then the same great principles of justice require that you should pronounce him innocent. The evidence sustaining this defence consists of the depositions of individuals avowedly participating in the expedition, and secondly, of the oral testimony of several individuals, showing, or tending to show, that M'Leod was during the execution of this enterprise at a distant spot, in another town.

First, then, with regard to the evidence of the commissions. The prisoner's counsel is right in telling you that evidence taken in this way is, and should be, less satisfactory than that given personally before you. But so far

as the depositions themselves go to describe the individuals testifying, you may derive some information respecting the standing and character of these individuals. Some of them are lawyers, some of them mariners, and some of them officers in her Majesty's service; and by their description they should all be men of character and responsibility. It has been said that this commission was a "roving commission;" that witnesses were examined whose names had not been returned; but there was in the spirit of liberality, and by consent, a stipulation made that more witnesses than those named might be examined. The Attorney General has criticised the testimony of these deponents with great minuteness and equally great ability. He has pointed out where the witnesses have contradicted each other or the truth. For instance, some saying that resistance was made on board the boat, whereas it has been shown that there was no resistance. If the witnesses swore so, knowing that they were swearing falsely, that will of course detract from their credibility. But Wells himself testifies that he overheard the sounds of fighting, and that in the darkness of the night and in the confusion of the *mele*, they all taking a part, had mistaken each other for the occupants of the boat, and that they fought together. If that were true, then it would follow that in testifying as to resistance encountered on board the boat they were not false, in the corrupt sense of the term. Passing from this, there is this other consideration, which must strike you in the outset. If, when Alexander M'Leod sued out this commission, and directed the commissioners to examine persons who had been in each of the boats, and if in truth he had been present there himself, he must be a bold man indeed. Because he must have supposed that the commissioners would either have taken only those who could not see in the dark, whether he was there or no, or that the men would have been so corrupt as to swear falsely, to extricate him from the punishment of his crime. But this is no further evidence than as it is a portion of the history of the transaction; and with these views you are to take up the testimony, and ascertain, after solemn inquiry, how much credit you should give these witnesses. It is undoubtedly true, gentlemen, that Sears cannot say, with any degree of certainty, that M'Leod was not on board the expedition. It is equally true, that M'Nab cannot say so, although he superintended the embarkation of the persons engaged in the enterprise. None but the All-seeing eye could penetrate the darkness that shrouded those there associated. But then there are one or two gentlemen from among the inmates of each particular boat who have been examined. Some of them knew M'Leod well before that time; others became acquainted with him afterwards; some talked with and recognized all their associates, and they all testified that M'Leod was not amongst them on that night.

Now, gentlemen, it is proper that you should apply the rule distinguishing between

positive and negative testimony. It is true that where one man swears he did see another at any particular spot and period, it is more satisfactory than when he can only say that the other was not there. But you will take into consideration the reasons which would lead you to believe that the crews of each of the boats must have well known each other, and so pass a correct opinion as to their credibility when they say positively that M'Leod was not amongst them. With this remark, I leave in your hands this portion of the prisoner's defence.

We come now to the proof of an *alibi*, which, if sustained, can leave no doubt of the prisoner's innocence, unless you can believe him gifted with ubiquity. The first witness to prove this, is William Press. He swears that he conveyed the prisoner and another person to Niagara, on the day of the destruction of the Caroline. That he knows it to be that day, from the fact of having made an entry of the transaction in his cash-book under that date. That he conveyed the prisoner in the evening as far as Stamford, on the way back to Chippewa. That there the prisoner alighted from the waggon, and went to the house of Captain John Morrison. William Stickney was called and corroborated the evidence of Press, and both, I may add, corroborate the statement of Hamilton respecting Rayncocks having left for Europe before the commencement of the troubles in Canada. The family of Captain Morrison and himself swear positively as to M'Leod's being there on the night of the 29th December. Captain Morrison states that he is enabled to fix the day from the circumstances that his friend Colonel Cameron called at his gate early next morning and informed him of the destruction of the Caroline, and gave him a fragment of the ruins which he had found in an eddy below the Falls; that he told this to M'Leod, whom he found half dressed in the parlour, where he had slept during the night; that M'Leod was electrified, and calling for his horse, purposed to leave immediately, but finally remained for breakfast: after which he went on his way. Then comes the witness Gilkinson—that he met M'Leod on the day after the destruction of the Caroline on the road from Stamford; that they rode up together opposite Navy Island, from which they were fired on; that one of the balls was picked up and handed to M'Leod, who carried it with him; and Sears, you will recollect, states that on this day he saw M'Leod and another person riding along that way, and that they were fired on from Navy Island. The testimony is also corroborated by that of Mr. M'Lean. This is the aggregate of the testimony, gentlemen, on the part of the defence. The evidence of the Morrisons, and the declarations of M'Leod on his examination, have been submitted to you, and criticised by the Attorney General with great ability. If he has satisfied you that the Morrisons may have been mistaken as to dates, and in particular in reference to this great epoch, and that the other witnesses confront-

ing them may have also been mistaken, then your confidence in this portion of the testimony vanishes. But if you decide on just grounds otherwise, then it should, I think, be deemed satisfactory in establishing the innocence of the prisoner.

But, gentlemen, if, even after all, though the prisoner may, in your opinion, have failed completely in proving an *alibi*, yet if he have raised sufficient doubt as to his guilt, he is to have the full benefit of that doubt. The law never divides between the living and the dead—never consigns an individual to the tomb without an overwhelming amount of evidence to prove the guilt of the accused. In this spirit you are now to consider the evidence which I have briefly reviewed before you. And now, gentlemen, my task is performed. Your duty remains to be done. And it is one of the most solemn trusts that can ever be reposed in a citizen. You are to take the case into your deliberate consideration. You are to weigh and decide on every part and portion of it. You are to call into exercise your best powers of judgment, regardless of rumours which may have reached your ears—regardless of every consideration except that of the guiding principle of justice and impartiality. And when you shall have come to your decision, and declared where the truth lies, then with an independence that will honour you, and with the noble integrity that your country expects you to exhibit, you will pronounce your verdict. And then I trust that all who have witnessed the trial—the ability with which it has been conducted, and your patience in attending to it—will be satisfied. If the evidence will lead you to say that he is guilty, then, although your decision should wrap your country in the flames of war, you will fearlessly pronounce it. On the other hand, if he be innocent, you will pronounce him so, regardless of threats or murmurs or fear of rebuke; and may the God of truth enable you to decide according to those principles of truth and equity which are the foundations of the eternal throne.

The jury retired, and, after being absent about thirty minutes, returned into Court, having agreed upon their verdict of—*Not guilty*.

LAW OF LIBEL.

PRIVILEGED COMMUNICATIONS.

WE extract the following observations from the Report of the Criminal Law Commissioners:

"The law of England recognizes the class of cases where, so far as intention is concerned, the offence depends on the actual intention of the party who makes a communication which is in itself injurious, but where it is made upon an occasion which justifies or excuses the party making it, provided that he acted *bona fide* in reference to such occasion, in making a fair representation. Whether the occasion be such as to constitute the commu-

nication a privileged one, is a question of law for the decision of the Court; whether the party, making the communication, acted with an honest motive, or took advantage of the opportunity to gratify a malicious intention, is a question of fact to be decided by a jury. We have in respect of this class of cases, proposed such general rules as appear to be warranted by the cases which have occurred and been decided on this subject.

"The law of England having thus recognized the two classes of cases in which the occasion either supplies an absolute defence to a prosecution for libel, or a defence subject to the condition that the party acted *bona fide* without malice, a third class is left, where the occasion neither constitutes an absolute defence nor a qualified one, dependent on the absence of actual malice. In such cases, although the law in this as in all others, deems a malicious publication to be essential to the offence, it also deems the publication of illegal matter without lawful justification or excuse to be malicious. Malice in such case is a legal inference, to be made from the doing an illegal act without justification or other excuse from circumstances. We proceed to make a few observations on this subject, as preparatory to some remarks on the history of the law of libel in connexion with the Libel Act. The charge against a defendant in a case of libel, consists in the allegation that he published the matter stated to be libellous, and the further allegation that he published it *maliciously*. If, then, there be no doubt as to the fact of publication, the only question is, whether the defendant published the matter *maliciously*; and, in the absence of any circumstances which supply an absolute or qualified defence, the question is simply whether he was guilty of malice in law,—that is, whether he wilfully published that which it was illegal to publish. The ultimate question, therefore, depends wholly on the nature and quality of the matter published. In case it were a libel, the act of publication would be malicious in law; but if the matter published were not illegal, then there could be no malice in law and no malicious publishing, and the defendant would not be guilty of the offence charged, to which malice is essential; for malice in law cannot possibly be inferred from the doing of an innocent act. Let it be supposed, by way of illustration, that the defendant has published of A. B. that he has been guilty of fraud by cheating at cards; that the publication is proved; and consequently that the only remaining question is, whether the act was done maliciously. In the absence of any justifying occasion, the matter published, being in its own nature injurious and illegal, would be deemed to be malicious, and the defendant would properly be convicted. Let it be supposed, however, that the matter published had been simply this:—'A. B. is an unskilful player at whist.' On the publication having been proved, the question would be, whether it was a malicious publication, and such it clearly would not be. Such an assertion would be injurious to no man's

character: the matter published would not be deemed to be illegal, and consequently the publication could not be regarded as a malicious publication. Malice in law, as we have already had occasion to observe, cannot result as an inference of law from the doing of a legal act; it is properly an inference from the doing an illegal act (not merely an act alleged by the prosecutor to be illegal) without lawful justification or excuse. Unless, therefore, the matter published were illegal and libellous, there would be no foundation for an inference or verdict of *guilty*; for such a verdict includes a finding guilty of all that is essential to the charge, and consequently of the allegation of malice, where there was no malice either in fact or in law. Although such a verdict would be unjust in case the matter published were not libellous, the defendant would have it in his power to arrest the judgment or to reverse it upon error; not, indeed, on the precise ground that an act in itself innocent could not supply an inference of malice, but because, according to the technical form of proceeding, it would appear on the face of the indictment that the matter charged as libellous was no libel,—as for instance in the case put, of charging the prosecutor not with fraudulent practices, but only with unskilfulness at play,—and the judgment would accordingly be arrested or reversed. This would not afford a remedy, it would only show that injustice had been done. If there was no libel, there was no malicious publication, and so the party was not guilty of the alleged offence; he ought, therefore, to have been acquitted; he ought not to have been put to the expense and trouble of extricating himself from an unwarranted verdict; and, at all events, ought not to have been subjected to the obloquy of a recorded conviction, from which, indeed, even the arrest or reversal of the judgment, does not entirely relieve him, as the malice of his conduct stands recorded. For these reasons it seems to be clear, that in the case of an indictment for publishing a libel, as in every other case, a party is entitled to his acquittal, unless all the allegations put in issue by the plea of not guilty are decided against him, as well in point of law as in fact. So long as it is doubtful whether a fact essential to guilt be proved, or whether the quality of such facts as are proved be such as to constitute guilt, a speculative verdict of guilty cannot be adversely founded.

"A defendant, therefore, if these observations be correct, cannot be found guilty where the case turns on implied malice, unless the matter published be a libel in point of law. Upon the question of libel or no libel, no doubt seems to have been entertained previously to the Libel Act, and no essential alteration seems to have been made by the act in that respect, that the Court is to decide upon it as a mere question of law. It must be so decided on demurrer, on motion in arrest of judgment, on a writ of error brought, and on a special verdict whenever the jury find one. We now advert to the practice which pre-

vitably to the Libel Act in cases where the publication of the alleged libel having been proved, and no justification arising from the occasion, the question depended on malice in law. Under these circumstances several very learned judges successively held that as the question really depended on the quality of the alleged libel as stated upon the record, the proper mode of deciding the question would be by reference to the Court above, who would decide on inspection of the record, and that a verdict of guilty under such circumstances would be but equivalent to a special verdict in other cases, and the whole matter would be decided by the opinion of the Court upon the alleged libel as it stood on the record. But although it be true that the judgment of the Court above when given would decide the whole case, and that if the publication were not libellous the defendant would be able to arrest the judgment, the objection to this course was not by that means removed, viz., that the defendant was entitled to his acquittal at once upon the trial, for if the matter was not libellous and illegal there could be no implied malice, and so he was entitled to an acquittal, issue having been joined on malice as well as upon other essential allegations. The assimilating a verdict of guilty in the case of libel to a special verdict in other instances was obviously fallacious, in this respect, that in the ordinary case of a special verdict the defendant is not found to be guilty until the Court has decided on the facts specially found; whereas upon a general verdict of guilty in the case of libel the defendant would be deemed to be guilty, unless he arrested the judgment or reversed it on error. In taking the course which the Court did in directing a verdict of guilty to be found on the mere proof of the publication of the libel and truth of the innuendos, they seem not to have sufficiently considered that although the question of libel or no libel was upon the record, it was one also essential to an issue raised by the defendant's plea of not guilty, and that without a finding against him on the denial of malice he could not legally be found guilty. As the malice, which was an essential ingredient in the offence, depended wholly on the quality of the matter published, that being legal there could be no malice by implication, in other words the defendant was innocent. If in such a case the judge had informed the jury at the trial that the matter published was not libellous, he must have told them that no malice in law was proved, and consequently that the defendant was entitled to his acquittal.

"It is, no doubt, occasionally conducive to the ends of justice that a special verdict should be found, in order that the law in a case of difficulty may afterwards be applied; but in such cases no fact is found but on sufficient evidence, no presumption of intention made on legal grounds which is not sanctioned by the Court, and the jury is in no case compellable to return such a verdict. But according to the practice in the case of libel, a general verdict of guilty was required to be found in

all such cases, the jury were not allowed to exercise any option, and the inference of guilt, so far as regarded malice, was required to be made without the sanction of the judge's opinion, that it was one which was warranted by the facts. It was, we apprehend, with a view to the removal of these anomalies that the Libel Act was passed, without any intention to enlarge the province of juries, by investing them with any judicial authority to determine what shall constitute a libel. A jury could not exercise such a power of judging without inconsistency and a probable conflict of decisions, unless they were invested with conclusive authority. If their finding the publication not libellous ought to be conclusive for the purpose of acquittal, it should seem that a contrary finding ought to be conclusive for the purpose of conviction.

CONSTRUCTION OF STATUTE 32 G. 3, c. 60.

"The course of directing juries, in the class of cases under consideration, to find the defendant guilty on proof of the act of publication and truth of the innuendos, having been in several instances adopted, though not without much resistance and discussion, gave rise to the stat. 32 of King Geo. III., c. 60. In that act it is recited that doubts had arisen, whether, on the trial of an indictment or information for the making or publishing any libel, where an issue or issues are joined between the King and the defendant or defendants, on the plea of not guilty pleaded, it be competent to the jury impanelled to try the same to give their verdict upon the whole matter in issue; and it is then *declared and enacted* that on every such trial the jury sworn to try the issue may give a general verdict of guilty or not guilty upon the whole matter put in issue upon such indictment or information, and shall not be required or directed by the Court or judge before whom such indictment or information shall be tried, to find the defendant or defendants guilty, merely on the proof of the publication by such defendant or defendants of the paper charged to be a libel, and of the sense ascribed to the same in such indictment or information. By the second section it is provided, 'That on every such trial the Court or judge before whom such indictment or information shall be tried, shall according to their or his discretion, give their or his opinion and direction to the jury on the matter in issue between the King and the defendant or defendants, in like manner as in other criminal cases.' By the third section it is also provided, 'that nothing herein contained shall extend, or be construed to extend, to prevent the jury from finding a special verdict, in their discretion, as in other criminal cases.' And by the fourth section, 'In case the jury shall find the defendant or defendants guilty, it shall and may be lawful for the said defendant or defendants to move in arrest of judgment, on such ground and in such manner as by law he or they might have done before the passing of this act, anything herein contained to the contrary notwithstanding.'

"The object of that statute, as well as its effect, appears to consist simply in putting the trial for libel on an information or indictment on the same footing with an information or indictment for any other offence. The essence of this declaratory statute consists in the negative enactment, that the jury shall not be required or directed to find the defendant guilty merely on proof of the publication of the alleged libel, and of the truth of the innuendos; an enactment which, we apprehend, was fully justified by the reason already given, that the facts so proved could not of themselves constitute guilt.

"The statute leaves the question of libel or no libel a mere question of law. It was clearly considered to be such before the passing of the act, for the very grounds for calling on the jury to pronounce a verdict without reference to the contents of the alleged libel, was in order to have that question considered as raised by the record. And there is nothing in the act which at all warrants the jury in dealing with this question as one of fact. They are indeed enabled to give a general verdict including law and fact, but so they may in any other case. And the fourth section expressly provides that in case of a verdict of guilty, the defendant may, as before the act, move in arrest of judgment. So the defendant may, if he please, demur to the indictment, or bring a writ of error, in which cases also the question is one of law for the consideration of the Court. So it is competent in any case for the jury by finding a special verdict to leave the question to the judgment of the Court.

"In the case of the *King v. Burdett*, Mr. Justice Best observes, 'it must not be supposed that the statute of George the Third made the question of libel a question of fact; if it had, instead of removing an anomaly it would have created one. Libel is a question of law, and the judge is the judge of the law in libel as in all other cases; the jury having the power of acting agreeably to his statement of the law or not. All that the statute does, is to prevent the question from being left to the jury in the manner in which it was left before that time. Judges are, in express terms, directed to lay down the law as in other cases. In all cases the jury may find a general verdict; they do so in cases of murder and treason, but then the judge tells them what is the law, though they may find against him, unless they are satisfied with his opinion.'

"By the second section the Court shall, according to their discretion, give their opinion and direction to the jury on the matter in issue between the King and the defendant, as in other criminal cases. As a general rule, so far as our experience extends, it is usual for the judge to inform the jury in respect of the legal quality of all the facts proved, or which the evidence tends to prove, so far as the legal quality of such facts is essential to the issue; that is, to the guilt or innocence of the accused. In the case of libel, where the circumstances neither bar the indictment nor show the communication to be a privileged one, so as to

render proof of express malice essential to the offence, the questions are, whether the defendant published the alleged libel in the sense attributed by the innuendos, and whether he acted of implied malice: such malice depends wholly on the question whether the matter published is or is not libellous, it being clear that malice cannot be implied in law from an act wholly innocent. In order then to warrant a jury in finding a verdict which includes malice, they ought to be satisfied either by information from the Court or of their own knowledge, that the matter published is libellous; and certainly, in conformity with the ordinary practice in criminal cases, they ought to act on the information of the Court. To what extent a Court is bound to give such information we presume not to enquire; it is a point on which, by the express terms of the Libel Act, the Court is to exercise a discretion. It is, however, manifest that in all such cases, the verdict in justice depends simply on the quality of the alleged libel, that is, on a question of law; and that the more a jury is exposed to doubt and error in such cases from being left to decide what is not properly within their province, the greater danger must there be of an erroneous conclusion; one which may, it is true, be set right at some expence and trouble to the defendant, in case the jury find him guilty of publishing that which turns out not to be libellous, but which admits of no remedy in case of an erroneous acquittal.

"Although the history of the former practice upon trials for libels, which gave rise to the Libel Act, is more immediately connected with the branch of criminal procedure than with the present subject, yet its intimate connexion with, and illustration of the doctrine of implied malice will, we trust, justify the above observations on the present occasion.

"It is of the highest importance that the provinces of the Court and jury should be kept perfectly clear and distinct; great and inevitable confusion must else obstruct the administration of justice through the medium of this ancient and popular tribunal. The rule of distinction has been established from very early times: '*Ad questionem facti respondent juratores, ad questionem juris respondent iudices.*' As libel is a matter of legal definition, it must universally be a question of legal judgment whether the facts found are or are not comprehended within that definition.

"To make so important a question as that of libel an exception would constitute an anomaly, and, as appears to us, an unfortunate one, for no other case can be selected in which the just application of the law to the facts is so difficult; consequently there is none in which the delegation of the duty to a jury would be more likely to occasion confusion and inconvenience. We should not have extended these observations so far had we not apprehended that some discrepancy of opinion exists on this subject, and had we not considered it to be most important that any doubt on this head ought to be laid at rest by legislative authority."

LEGAL BIOGRAPHY.

ROWLEY LASCELLES, ESQ.

MR. LASCELLES was born in Westminster, educated at Harrow school, and called to the bar at the Middle Temple, on February 10th, 1797. Mr. Lascelles devoted himself principally to literary pursuits, and was not much distinguished as a lawyer. He will be remembered, however, as one of the benchers of the Middle Temple. He practised for about twenty years at the Irish Bar.

He was engaged in a public work of great magnitude, called the "*Liber Hiberniæ*." This undertaking originated from very copious manuscript collections, which had been made by Mr. Lodge, deputy keeper of the Rolls in Ireland, and purchased from his widow by government. They were kept in Dublin Castle, and at the commencement of the Record Commission for Ireland in 1810, were handed over to the commissioners to make such use of them as they thought best. Amongst them was an account of all the offices recorded by patent or otherwise, in the Court of Chancery, commencing in 1540, and carried down to Mr. Lodge's death. The board determined to adopt this work, and make it as complete as possible. This task was entrusted first to Mr. Dubigg, author of a history of the four courts, and afterwards in 1813, to Mr. Lascelles; who was authorised by Mr. Goulburn, Chief Secretary for Ireland, to carry on the work in London, where it was printed under the immediate authority of the Treasury. For performing this task Mr. Lascelles was to receive a provisional salary *ad interim* of 500*l.* a-year, and it was understood that at the end he should be suitably provided for. This arrangement went on for eight years; in the course of which Mr. Lascelles received the total sum of 4000*l.* The work was then stopped on the ground of retrenchment and public economy. This was in 1830; and shortly after the Treasury referred the work to the consideration of the English Record Commission, who made a report, in consequence of which the work was entirely stopped. In the copy of the work now deposited in the British Museum, is the following MS. memorandum. The "*Liber Hiberniæ*" was not compiled under the direction of the Record Board. It arose with the Treasury. In 1811, the Record Board was requested to report upon it, and it is understood that in consequence of that report the further prosecution of the work was suspended. No part of it was ever published.* Copies, have, however, been distributed to the various public libraries. The title is as follows:—"*Liber Munerum Publicorum, ab an. 1152, usque ad 1827, or the establishments of Ireland from the nineteenth of King Stephen to the seventh of George IV, during a period of 675 years, being the report of Rowley Lascelles, of the Middle Temple, Barrister at Law, extracted from the records and other authorities by special command, pursuant to an address, an. 1810, of the Commons of the*

United Kingdom. Ordered to be printed, 1824. The first part of the work contains a History of Ireland, which may be considered in some measure original. The great mass of the subsequent contents was probably derived from Mr. Lodge's collection; but other parts were taken from printed books. Mr. Lascelles stated before the Committee that nine-tenths of his work was done. Nothing, however, further was done after the stoppage in 1831. The Treasury made Mr. Lascelles an offer of 500*l.* upon a receipt in full of all demands, which he declined; but afterwards received that sum "on account," and maintained his further claim for the annual payment of 500*l.* so long as the work remained unfinished. He presented two petitions to the House of Commons on the subject; the second of which was referred to a Committee, but they reported that it related to a subject not directly connected with the more immediate object of their inquiries, and as it involved a question of agreement of a somewhat complicated and obscure nature, they abstained from expressing an opinion upon it.

Mr. Lascelles was also the author of "*The Heraldic Origin of Gothic Architecture*;" "*A General Outline of the Swiss Landscapes, 1815*;" "*Letters of Publicola; or a modest Defence of the Established Church. 8vo. Dublin, 1816.*" "*A Dialogue, after the manner of Castiglione, on Oxford, published with plates, by Messrs. Storer, in 1822.*" A Paper, entitled "*Reflections occasioned by the Memoir of the late Dr. Joseph Drury, formerly Head Master of Harrow, as given in the Annual Obituary and Biography for 1835,*" signed *Yorick*, in the *Gentleman's Magazine* for March, 1835.

Mr. Lascelles died on the 19th March last, at the age of 71.^a

LAW LECTURES AND EXAMINATIONS
IN AMERICA.

It appears that our transatlantic brethren are pursuing the plan of Law Lectures and Examinations. The following is extracted from an announcement made by the Law School at New York:

The annual courses of Lectures and examinations for the sessions of 1841-2, commenced on the 27th of September, and will continue until the 6th of June, 1842.

The whole will be divided into four courses, each consisting of twenty-seven lectures, and occupying nine weeks. The fees of instruction are now fixed at thirteen dollars for each course, to be paid in advance, making the annual expense to each student only fifty-two dollars.

* We have abridged this Memoir principally from the *Gentleman's Magazine* of the present year, p. 323-5.

The method of instruction principally consists of oral examinations and explanations, followed on every occasion by submitting appropriate cases to the class, illustrative of the subject of some preceding lecture. Each member of the class is required to give his opinion at the instant, together with the reasons upon which it is founded. This method, added to the more formal exercises of the Moot Court, necessarily habituates the mind to legal investigation and reasoning.

The school will be composed of *two classes*, who will attend on different evenings. The senior class, consisting of junior members of the profession and students who have already made some progress, will commence this session with the subject of *Pleadings*, to be followed in subsequent courses by practice and evidence. The junior class will be confined for the first year to examinations more analytical and elementary.

CANDIDATES WHO PASSED THE MICHAELMAS TERM EXAMINATION, 1841.

<i>Clerk's Name.</i>	<i>Name and Residence of Attorney to whom articulated, assigned, &c.</i>
Adamson, Charles Murray	Nicholas Walton, Newcastle-upon-Tyne; assigned to John Stevenson, 3, King's Road, Bedford Row.
Aitkens, John	John Parker Bolding, 9, Scot's Yard, Bush Lane.
Auber, Henry Peter	James Weston, 31, Fenchurch Street.
Babington, Edward, jnn.	Edward Babington, Horncastle.
Baldock, Henry	Edward Twopeny, Rochester.
Barber, Henry	Christopher Sayers, Great Yarmouth; assigned to George Wello Holt, Great Yarmouth.
Barnby, Harper	William Smith, Bridlington.
Bencraft, Richard Inledon	John Sherard Clay, Barnstaple.
Black, David	Thomas Freeman, Brighton.
Black, William	Henry Edward Stables, Copthall Court, Throgmorton Street.
Blandy, William	William Edmund Tugwell, Devizes.
Bridges, George Talbot	Nathaniel Mason, Red Lion Square.
Browne, Eyles Irwin Caulfield	George Marshall, East Retford, county Nottingham.
Buckerfield, Thomas Henchman	John Halcomb, Marlborough, Wilts, and Hungerford, Berks.
Buncombe, William	Samuel Walter, Chard.
Bushell, Henry Richard	Edward Knockor, Dover.
Campbell, John Thomas	William Adair Bruce, Bath; assigned to Henry John Mant, Bath.
Charnock, Richard Stephen	Richard Charnock, 5, King's Bench Walk, Temple; assigned to Wm. Christmas Mansfield, 20, John St., Bedford Row.
Clarke, Robert George	William Mark Fladgate, 43, Craven Street, Strand.
Cooper, James Alfred	John Reid Wagstaff, Bradford.
Corser, George Sandford	Richard Parry Jones, Whitchurch.
Coupland, Charles, the younger	George Frederick Hudson, 23, Bucklersbury.
Cox, Samuel	Thomas Baverstock Merriman, Marlborough, Wilts; assigned to William Henry Buckerfield, Bristol.
Craig, Alexander Samuel	John William Watson, Shrewsbury; assigned to Sir John Bickerton Williams, Knt., Hall Wem, Salop; re-assigned to Charles Dixon Craig, Shrewsbury.
Crawley, Antony Gibbs	Henry Lewin, 8, St. Martin's Place.
Cunnington, John, jun.	John Cunningham the Elder, Braintree.
Davis, Walter Hamilton	Henry Cope, 14, Agnes Place, Southwark.
Farmer, William Francis	Shirley Forster Woolmer, 8, King's Road, Bedford Row; assigned to Henry William Birch, 8, King's Road.
Ford, William Augustus	George Samuel Ford, 8, Henrietta Street, Covent Garden.
Fryer, Merlin	William Marks Benison, St. Thomas the Apostle, Devon; assigned to George Wilson Grove, Exeter.
Fudge, William	Andrew Livett, Bristol.
Gardiner, William	Charles Woodbridge, Uxbridge.
Geare, William	John Geare, Exeter.
Gem, Thomas Henry	Henry Moore Griffiths, Birmingham.
Grant, James	Patrick Gordon, 5, Symond's Inn, Chancery Lane.
Grealey, Charles	John Welchman Whateley, Waterloo Street, Birmingham.
Gridley, Henry Gillett	Henry Gridley, Fakenham, Norfolk; assigned to John Wood, 8, Falcon Street, Aldersgate.
Griffiths, Henry	Ralph Spicer, Great Marlow, county Buckingham; assigned to Walter Branscomb, 1, Wine Office Court, Fleet Street.

<i>Clerk's Name.</i>	<i>Name and Residence of Attorney to whom articulated, assigned, &c.</i>
Haslewood, Edward William	Joshua John Peele, Shrewsbury.
Hill, William John	William Richard Bishop, Exeter.
Hinds, George	William Nash Ottaway, Staplehurst.
Hodges, Edward, jun.	John Cox, 62, Lincoln's Inn Fields.
Holmes, John Dickonson	Thomas Wheldon, Barnard Castle.
Hore, Charles Frederick	Alexander Fraser, Lincoln's Inn Fields; assigned to James Hore, Lincoln's Inn Fields.
Hore, Maurice John	Allan Kaye, Liverpool; assigned to Joachim Andrade, Liverpool.
Horn, Richard	Abraham Story, Durham.
Horner, Francis	Henry Heathcote Statham, Liverpool.
Howell, Abraham	Joseph Jones, Welchpool.
Hubbard, Armiger Watts Ibbott	Augustus Adolphus Hamilton Beckwith, Norwich.
Judge, Thomas Gulliver	Thomas Tims, Banbury, county Oxford.
Kirby, George	Charles Woodbridge, Uxbridge; assigned to George Parsons Hester, Oxford.
Knight, Henry	John Seard, 11, Bedford Street, Bedford Square; assigned to George Phillips Foster Gregory, 28, St. Swithin's Lane.
Langley, William Tapley	Thomas Edward Drake, Exeter.
Lilley, Joseph	Samuel Isaac Lilley, High Street, Peckham, Surrey.
Mackeson, Edward	Wightwick Roberts, 57, Lincoln's Inn Fields; assigned to William Lawrence Bicknell, 57, Lincoln's Inn Fields; re-assigned to George William Finch, Lincoln's Inn Fields.
Marshall, Frederick	Henry Marshall, Plymouth; assigned to George Weller, 29, Essex Street.
May, John	Bernard John Wake, Sheffield.
Mertens, Herman Dirs	Barclay Farquharson Watson, 36, Lincoln's Inn Fields.
Moore, James	Thomas Whalley Bolton, 4, Elm Court, Temple.
Moore, Joseph Henry	William Wills, Birmingham.
Newby, Charles John	Henry Seymour Westmacott, Gray's Inn.
Newton, Robert	Henry Norton, Gray's Inn; assigned to John Henry Benbow, Lincoln's Inn.
Nevinson, George Henry	Daniel Smith Bockett, 60, Lincoln's Inn Fields.
Nicholson, George	George Nicholson, Hertford; assigned to Edward Thompson, Salter's Hall.
Oakley, Charles Henry	John Oakley, 138, Long Lane, Bermondsey; assigned to George Frederick Hudgson, 23, Bucklersbury.
Pagden, William	John Clabon, 76, Mark Lane.
Parke, William, the younger	James Parke, 63, Lincoln's Inn Fields.
Parry, Henry	Robert Christopher Parker, Thornton Row, Greenwich.
Parson, George John	William Everest, Epsom.
Patteson, George Lee	John Chevallier Cobbold, Ipswich.
Peachey, Edmund	James Bennett Freeland and Robert Raper, Chichester; assigned to Robert Raper, Chichester.
Pidcock, Richard	William Nokes, Rectory Place, Woolwich.
Ponsford, Henry	William Gaisford, Berkeley, Gloucestershire; assigned to Henry Methold, 43, Lincoln's Inn Fields.
Ratcliffe, William Edward	John Henning, Weymouth; assigned to John Peter Fearon, 1, Crown Office Row, Inner Temple.
Raynar, William Thompson	John Raynar, Leeds.
Redpath, Henry Syme	Thomas Dean, Gray's Inn.
Richards, Charles	Thomas Dickin Browne, Wem.
Richardson, John	Thomas Richardson, Thirsk, county York; assigned to George Rawson, jun., Leeds.
Ridley, John	John Anderson Pybus, Newcastle-upon-Tyne.
Robins, Josiah	Sir John Bickerton Williams, Shrewsbury, Salop; assigned to Robert Gillam, the younger, Birmingham.
Robinson, John Frederick	Henry Offord, Hadleigh; assigned to Charles John Whishaw, 1, South Square, Gray's Inn.
Rogers, Thomas, the younger	Thomas Rogers, Helston.
Roose, Benjamin	George Bradley Roose, Amlwch, Anglesea.
Rundle, George Henry Ellery	John Beer, Devonport.
Sabine, Henry	John Wm. Jas. Dawson, 7, Charlotte Street, Bloomsbury.
Scratten, John	Peter Lamb Hussey, Maidstone, Kent; assigned to Robert Osborne, Bristol.
Sherby, John	William Nokes, Rectory Place, Woolwich.
Shuter, John David	David Shuter, 67, Millbank Street, Westminster.
Stuart, Marlow William John	Joseph Radcliffe Wilson, Stockton.
Stuart, Marlow William John	John Mee, East Retford.

<i>Clark's Name.</i>	<i>Name and Residence of Attorney to whom article, assigned, &c</i>
Smith, Francis	Septimus Smith, Blandford Forum.
Smith, John	Charles Bailey, Winchester; assigned to Charles Parker, 1, Lincoln's Inn Fields.
Sollory, James	John Brewster, Nottingham.
Solly, James Smith	John Mourilyan, Sandwich.
Southgate, Francis Thomas	Francis Southgate, Gravesend.
Stirke, Henry	James Miller, Ashton-under-Lyne.
Street, John Widgery	Charles Henry Turner, Exeter.
Stroughill, Charles	John Gibbs, Strood, Kent.
Stubbs, Henry	Samuel Payne, Nottingham.
Swaine, William Alexander	William Ransom, Stow Market, Suffolk; assigned to Richard Hart, 22, Cornhill.
Symes, John David	George Tanner, Crediton; assigned to John Elliott Fox, 40, Finsbury Circus.
Symonds, James Frederick	Samuel Beale, Upton-upon-Severn, Worcester; assigned to George Hall, New Boswell Court.
Tassell, James	Edward Watts, Hythe, Kent.
Taylor, George	James Brown Brooke, Ashton-under-Lyne.
Teesdale, John Marmaduke	John Teesdale, Fenchurch Street.
Trevor, Thomas Tudor	Thomas Henry Faber, Stockton; assigned to Henry Clarke, Gainsborough.
Thomas, Evan	David Thomas, Brecon.
Tomlinson, John	Edmund Percy, Nottingham.
Urmonson, John	William Beaumont, Warrington.
Vawdrey, William David	Peter Barker, Middlewich, county Chester; assigned to Thomas Richard Barker, of Northwick, Chester; re-assigned to John Cattlow, Cheadle.
Weston, Arthur Warne	William Hall, Bath.
Whiteway, John Harris	Parmenas Pearce, Newton Abbott, Devon; assigned to Joseph Billingsley Bullock, 16, George Street, Mansion House.
Wortham, Cecil Proctor, the younger	Cecil Proctor Wortham, the elder, Buntingford, Herts.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

George Pyke, Lincoln's Inn Fields.
John Daw, Exeter.
Charles Sladen, Doctors' Commons.
William Samuel Carrey, Great Ormond Street.
James Fawcett, Jewin Street.

MASTERS EXTRAORDINARY IN CHANCERY.

From 26th October, to 19th November, 1841, both inclusive, with dates when gazetted.

Brent, John, Trowbridge, Wilts. Nov. 19.
Crabb, Frederick, Rugeley, Stafford. Nov. 12.
Potts, Christopher Thomas, Sunderland. Oct. 29.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 26th October, to 19th November, 1841, both inclusive, with dates when gazetted.

Atkins, John, and David Laing, White Hart Court, Lombard Street, London, and Deptford, Kent, Attorneys and Solicitors. Oct. 29.
Harrison, Henry Spencer, and William Brown, Manchester, Attorneys, Solicitors, and Conveyancers. Nov. 9.
Roy, Richard, Joseph Blunt, John Duncan, David Graham Johnstone, and Charles Walton, Lothbury, London, and Great George Street,

Westminster, Attorneys and Solicitors. Oct. 29.

Scott, Edmund John, and William Parsons, St. Mildred's Court, London, Attorneys and Solicitors. Nov. 12.

BANKRUPTCIES SUPERSEDED.

From 26th October, to 19th November, 1841, both inclusive, with dates when gazetted.

Bradley, Jonas, Huddersfield, York, Iron Merchant. Nov. 19.
Bright, William Oliver, Chancery Lane, and of Judd Place, New Road, Attorney and Jeweller. Nov. 5.
Frale, Nathaniel, Bristol, Linen Draper. Nov. 19.
Merchant, Joseph Emery, Bristol, Cooper. Nov. 19.
Morcom, Joel, St. Ives, Cornwall, Grocer. Nov. 2.

BANKRUPTS.

From 26th October, to 19th November, 1841, both inclusive, with dates when gazetted.

Ashton, James, Liverpool, Printer and Painter. Books, Liverpool; Hobbs & Co., New Inn. Nov. 2.
Aarons, Benjamin, Knowles Court, Doctors' Commons, Furrer's Edwards, Off. Ass.; Wood & Co., Corbet Court, Graeceshurch Street. Nov. 12.
Budd, Henry, Birmingham, Cigar and Tobacco Merchant. Shaw, Ely Place; Thorney, Kingston-upon-Hull. Oct. 26.

- Bromfield, George Webb, Blackfriars Road, Brush Manufacturer and Warehouseman. *Gibson*, Off. Ass.; *May*, Princes Street, Spitalfields. Nov. 2.
- Bright, Edward, Pickett Street, Strand, Draper. *Groom*, Off. Ass.; Messrs. *Sole*, Aldermanbury. Nov. 5.
- Brooks, James, Manchester, Grocer and Tea Dealer. *Norris & Co.*, Bartlett's Buildings, Holborn; *Norris*, Manchester. Nov. 5.
- Briggs, Henry, Blackburn, Lancaster, Cotton Spinner and Power-loom Cloth Manufacturer, *Milne & Co.*, Temple; *Wilding & Co.*, Blackburn. Nov. 9.
- Barrett, John, and Arthur Youle Barrett, Kingston upon-Hull, Engine and Boiler Manufacturers. *Hicks & Co.*, Gray's Inn; *Holden*, Hull. Nov. 9.
- Bensusan, Abraham Levy, and Joshua Brandon, Walbrook Buildings, London, Merchants. *Graham*, Off. Ass.; *Jones & Co.*, Size Lane. Nov. 12.
- Bohte, Augustus, Sackville Street, Piccadilly, Tailor. *Lackington*, Off. Ass.; *Pike*, Old Burlington Street. Nov. 12.
- Burbey, Thomas, Richard Loe, and James Loe, Portsmouth, Southampton, Bankers and Merchants. *Hohne & Co.*, New Inn; *Cruickshank & Co.*, Gosport; *Hillard*, Portsmouth. Nov. 12.
- Bugg, George, Exmouth Street, Clerkenwell, and also of Wood Street, Clerkenwell, Carpenter and Builder. *Belcher*, Off. Ass.; *King*, Winchester Buildings. Nov. 16.
- Brittan, Francis, Bristol, Woollen Draper. *Mathinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Nov. 16.
- Barrett, George, Ecclesfield, York, Cattle Dealer and Butcher. *Branson*, Sheffield; *Moss*, Cloak Lane, London. Nov. 16.
- Bowser, John, Milton Street, Dorset Square, Middlesex, and of Preston Lodge, Larkhall Lane, Clapham, Surrey, Timber and Mahogany Merchant. *Johnson*, Off. Ass.; *Rye*, Golden Square. Nov. 19.
- Bowyer, Job, Sutton near Macclesfield, Chester, Provision Dealer and Grocer. *Bower & Co.*, Chancery Lane; *Lengard & Co.*, Stockport. Nov. 19.
- Binder, John, Moulton near Spalding, Lincoln, Coal Merchant. *Bonner & Co.*, Spalding; *Fidley*, Paper Buildings, Temple. Nov. 19.
- Cassell, John Henry, Mill-wall, Poplar, Middlesex, Naptha Seller. *Lackington*, Off. Ass.; *Grimaldi & Co.*, Copthall Court. Nov. 5.
- Caulier, Henry, Bath, Nurseryman and Seedsman. *Richards & Co.*, Lincoln's Inn Fields; *Drake*, Bath. Nov. 5.
- Carr, William, South Shields, Durham, Grocer and Tea Dealer, and Ship Owner. *Currie & Co.*, New Square, Lincoln's Inn; *Hewison*, Newcastle-upon-Tyne. Nov. 9.
- Cartwright, Anne, John Cartwright, and William Cartwright, Wigan, Lancaster, Cotton Spinners. *Adlington & Co.*, Bedford Row; *Leigh*, Wigan. Nov. 9.
- Carter, Henry Chapman, Sussex Terrace, Hammer-smith, Middlesex, Carpenter and Builder. *Whitmore*, Off. Ass.; *Lenacale*, Temple Chambers, Fleet Street. Nov. 12.
- Coe, Miles, Goldsmith Street, Wood Street, Cheapside, London, Laceman. *Lackington*, Off. Ass.; *Carter & Co.*, Lord Mayor's Court Office. Nov. 16.
- Croft, James, Apperley Bridge, near Leeds, York, Dyer. *Walker*, Furnival's Inn; *Blackburn*, Leeds. Nov. 16.
- Crowther, John, and John Butterworth, Leeds, York, Black Beer Brewers. *Wilson*, Southampton Street, Bloomsbury; *Payne & Co.*, Leeds. Nov. 16.
- Coltherup, Henry Phipps, Rochester, Kent, Dyer and Draper. *Turquand*, Off. Ass.; *Jones & Son*, Size Lane. Nov. 19.
- Cousins, Mary Ann, Maizehill, Greenwich, Kent, Lodging-house-keeper and Schoolmistress. *Edwards*, Off. Ass.; *Sturmy*, Wellington Street, London Bridge. Nov. 19.
- Chadwick, Samuel, James Chadwick, and John Chadwick, Heywood, Lancaster, Cotton Spinners, and Manufacturers. *Hill & Co.*, Bury Street, Saint Mary Axe; *Upton*, Manchester. Nov. 19.
- Dorman, Charlotte, and Edward Daniel Dorman, Charlotte Street, Rathbone Place, Oxford Street, Glass and China Dealers. *Groom*, Off. Ass.; *Salomon & Co.*, Windmill Street, Fitzroy Square. Nov. 2.
- Dix, Benjamin, jun., Roebuck Place, Great Dover Street, Southwark, Surrey, Builder and Dealer in Building Materials. *Alaeger*, Off. Ass.; *Foord*, Pinner's Hall, Old Broad Street; Messrs. *Gole*, Lime Street, London. Nov. 6.
- Davy, Josiah, Sheffield, York, Draper. *Fidley*, Temple; *Branson*, Sheffield. Nov. 5.
- Duncan, Mary Anne, Oxford Terrace, Hyde Park, Boarding and Lodging-house-keeper. *Graham*, Off. Ass.; *Hodgson & Co.*, Salisbury Street, Strand. Nov. 9.
- Davis, Edward, West Bromwich, Stafford, Timber Dealer and Boat Builder. *Clarke & Co.*, Lincoln's Inn Fields; *Reece*, Ledbury, Hereford. Nov. 9.
- Dickens, George, Hertford, Surgeon and Apothecary. *Green*, Off. Ass.; *Milne & Co.*, Temple. Nov. 19.
- Emans, William, Aldersgate Street, London, Bookseller and Publisher. *Turquand*, Off. Ass.; *Norton & Son*, New Street, Bishopsgate. Nov. 16.
- Freeland, John Luff, Worcester, Innkeeper. *Bedford*, Gray's Inn Square; *Bedford & Co.*, Worcester. Oct. 26.
- Fletcher, Beaumont, High Holborn, Tallow Melter, (trading under the firm of John Marshall and Sons). *Johnson*, Off. Ass.; *Crowder & Co.*, Mansion House Place. Oct. 29.
- Fletcher, John Robert, Grantham, Lincoln, Wine and Spirit Merchant, and Soda Water Manufacturer. *Shoubridge*, Bedford Row. Nov. 2.
- Fell, Betty, Sharples, Bolton, Lancaster, Bleacher. *Milne & Co.*, Temple; *Briggs*, Bolton-le-Moors. Nov. 12.
- Fell, William, and Thomas Fell, Sharples, Bolton, Lancaster, Provision Dealers. *Adlington & Co.*, Bedford Row; *Hampson*, Manchester. Nov. 12.
- Fowkes, John, Leicester, Hosier. *Lawton*, Leicester; *Taylor*, John Street, Bedford Row. Nov. 12.
- Farris, Thomas, East Street, Manchester Square, Baker. *Belcher*, Off. Ass.; *Eden*, Villiers Street, Strand. Nov. 19.
- Ford, John, Stockport, Chester, Hat Manufacturer. *Bower & Co.*, Chancery Lane; *Harrop*, Stockport. Nov. 19.
- Gandy, George, Princes Street, Spitalfields, Silk Manufacturer. *Lackington*, Off. Ass.; *Turner*, Chancery Lane. Nov. 2.
- Grove, Edmund, Dark Lane, Dawley, Salop, Dye-

- per and Grocer. *Robinson, Salfinbiff; Chester & Co., Staple Inn.* Nov. 2.
- Glascott, Mary, George Minshaw, Glascott and Thomas Townsend Glascott, Great Garden Street, Whitechapel Road, Copper Merchants and Brass and Copper Manufacturers. *Johnson, Off. Ass.; Phillips, Lombard Street.* Nov. 5.
- Guppy, Robert, Halstock, Dorset, Horse Dealer. *Batten, jun., Yeovil; Clowes & Co. Temple.* Nov. 9.
- Greves, Henry, late of Kenilworth, and now of Leamington Priors, Warwick, Timber Merchant. *Cary, St. Swithin's Lane; Kitchen, Warwick.* Nov. 16.
- Groves, Peter, and Neville Beard, Boston, Lincoln, Leather Dressers. *Millington & Co., Boston; Scott, Lincoln's Inn Fields.* Nov. 19.
- Garry, James, Manchester, Brass Founder and Iron Foander. *Cooper & Co., Manchester; Addington & Co., Bedford Row.* Nov. 19.
- Graham, Alexander Slade, and George Smith Streader, Oldham, Lancaster, Contractors for Public Works. *Wood, Lincoln's Inn Fields; Wheeler, Manchester.* Nov. 19.
- Hall, John, and Samuel Vincent, Saint Mary Axe, London, Wholesale Tea and Coffee Dealers. *Edwards, Off. Ass.; Hughes & Co., Bucklersbury.* Oct. 26.
- Hildyard, Henry, and Robert Hildyard, Brigg, Lincoln, Wine and Spirit Merchants. *Dimmock, Size Lane, Bucklersbury; Ashurst, Cheapside; Nicholson & Co., Brigg.* Oct. 29.
- Holland, Edward Bernard, Manchester, and of Atherton, near Leigh, Lancaster, Power Loom Manufacturer of Calicoes, and Agent. *Law, Manchester; Capes & Co., Gray's Inn.* Nov. 9.
- Hill, Thomas, jun., and William Brookes, Saint Mary Axe, London, Merchants. *Johnson, Off. Ass.; Fisher, Bucklersbury.* Nov. 15.
- Hannay, David, Cavendish Square, Banker. *Graham, Off. Ass.; Richards & Co., Lincoln's Inn Fields.* Nov. 19.
- Harries, Henry Evan, otherwise Evan Henry Harries, Dowlais, Glamorgan, Draper and General Shopkeeper. *Blower & Co., Lincoln's Inn Fields; Leman, Bristol.* Nov. 19.
- Ingram, Benjamin, Beech Street, Barbican, London, Timber Merchant. *Whitmore, Off. Ass.; Selby, Serjeant's Inn, Fleet Street.* Nov. 2.
- Jones, Richard William Hugh, late of Castleman and Mortlake, Surrey, and now of Bayswater Terrace, Middlesex, Coal Merchant. *Belcher, Off. Ass.; Guillaume, Walbrook.* Nov. 5.
- Jones, Thomas Morton, Yardley, Worcester, Merchant. *Rawland & Co., White Lion Court, Cornhill; Tyndall & Co., Birmingham.* Nov. 16.
- Jackson, Henry, Mountsorrel, Leicester, Money Scrivener. *Emmett, Bloomsbury Square; Fearnhead, Ashby-de-la-Zouch; Huchmall, Loughborough.* Nov. 19.
- Kidman, George, Long Alley, Worahip Street, Victualler. *Turquand, Off. Ass.; Ware, Blackman Street.* Nov. 9.
- Laing, John, and George Laing, Eastcheap, London, Cork Manufacturers; *Green, Off. Ass.; Baker & Co., Bucklersbury.* Oct. 29.
- Lucas, Robert, Bristol, Ironmonger; *Bridges & Co., Red Lion Square; Wayte, Bristol.* Nov. 2.
- Lister, William, Roldrey, York, Cloth Manufacturer. *Walker, Furnival's Inn; Blackburn, Leeds.* Nov. 16.
- Lewis, John, Hockley Colliery, Sedgeley, Stafford, Coal Master, and Plumber and Glazier. *Brown, Bilston; Williamson & Co., Verulam Buildings, Gray's Inn.* Nov. 16.
- Merritt, Patrick, Huggin Lane, Wood Street, London, Warehouseman. *Alaager, Off. Ass.; Tarrant, Walbrook.* Nov. 7.
- Marshall, Beaumont, High Holborn, Tallow Melter. *Johnson, Off. Ass.; Crowder & Co., Mansion House Place.* Nov. 2.
- Mells, William, Manchester, and John Turlay, of Manchester, Tailors and Drapers. *Hammond, Furnival's Inn; Messrs. Bennett, Manchester.* Nov. 5.
- Mitchell, Rowland, Lime Street, London, Merchant. *Gibson, Off. Ass.; Clayton & Co., Lincoln's Inn.* Nov. 9.
- M'Lachlan, Robert, Liverpool, Victualler. *Snowball, Liverpool; Johnson & Co., Temple.* Nov. 9.
- Myers, John Kirkley, Sunderland, Durham, Victualler. *Bell & Co., Bow Church Yard; Wilson, Sunderland.* Nov. 12.
- Mountford, Edward, and Frederick Mountford, Bath, Drapers. *Groom, Off. Ass.; Ashurst, Cheapside.* Nov. 15.
- Morgan, William, late of Lichfield, Bookseller; (now residing at Langdon, Stafford.) *Tatham, Staple Inn; Eggington, Lichfield.* Nov. 16.
- Nash, William, Budge Row, London, Tea Dealer. *Alaager, Off. Ass.; Adamson, Ely Place.* Nov. 12.
- Neamegen, Leopold, Highgate, Middlesex, Bookseller. *Johnson, Off. Ass.; Davis, Charlotte Street, Bedford Square.* Nov. 16.
- Nightingale, John, Rusholme, Manchester, Innkeeper. *Creswell, Manchester; Gibson, Manchester; Chisholme & Co., Lincoln's Inn Fields.* Nov. 16.
- Playne, William, Gloucester, Saddler and Harness Maker. *Bailey, Gloucester; Messrs. Poole & Co., Gray's Inn.* Oct. 26.
- Pilcher, Joseph Webb, Crabble, River, Kent, Miller. *Jefferys & Co., Faversham; Bower & Co., Chancery Lane.* Nov. 19.
- Rosselli, Peregrino, Lime Street, London, Merchant. *Green, Off. Ass.; Ruck, Mincing Lane.* Oct. 26.
- Raine, Edward, and John Raine, Barnard Castle, Durham, Carpet Manufacturers. *Richardson, Barnard Castle; Messrs. Tyas, Beaufort Buildings, Strand.* Oct. 26.
- Ruston, John, Saint Paul's Church Yard, London, Commission Agent. *Whitmore, Off. Ass.; Goddard, King Street, Cheapside.* Oct. 29.
- Routledge, William, Liverpool, Wine and Spirit Merchant. *Duncan & Co., Liverpool; Adlington & Co., Bedford Row.* Nov. 5.
- Rainey, Jarvis, Spalding, Lincoln, Innkeeper. *Bonner & Co., Spalding; Temple & Co., Furnival's Inn.* Nov. 5.
- Rackett, Sarah, Bell Yard, Carey Street, Locksmith and Bell Hanger. *Green, Off. Ass.; Macphail, Wilmington Square.* Nov. 9.
- Robinson, Thomas, Leadenhall Street, London, Tallow Merchant. *Gibson, Off. Ass.; Crowder & Co., Mansion House Place.* Nov. 9.
- Rushbury, Henry Duncalfe, Fitzroy Place, Southwark Bridge Road, Surrey, and late of Fish Street Hill, London, Money Scrivener. *Pennell, Off. Ass.; Bickley, Duke Street, St. James's.* Nov. 12.
- Roberts, Robert, Gower Street North, St. Pancras, Wine Merchant. *Whitmore, Off. Ass.; Walls & Co., Hart Street, Bloomsbury.* Nov. 16.

- Rayment, George, Oxford Street, Mosier; *Gibson*, Off. Ass.; *Bicknell*, Manchester Street, Manchester Square. Nov. 19.
- Rowe, Charles Akerman, Leicester, Draper. *Toller*, Gray's Inn Square; Messrs. *Toller*, Leicester. Nov. 19.
- Smith, James Alexander, and William Monteath, Oxford Street, Linen Drapers. *Green*, Off. Ass.; *Lloyd*, Cheapside. Oct. 26.
- Saunders, James Ebenezer, jun., Upper Thames Street, London, Fish Factor and Merchant. *Lackington*, Off. Ass.; *Walters & Co.*, Basinghall Street. Oct. 26.
- Smith, Richard, and Stephen Marshall, Austin Friars, London, Russia Brokers. *Alager*, Off. Ass.; *Crowder & Co.*, Mansion House Place. Oct. 29.
- Southall, Richard, jun., Birmingham, Merchant. *Johnson & Co.*, Temple; *Higson & Co.*, Manchester. Oct. 29.
- Stevenson, Charles, Sheffield, York, Upholsterer and Furniture Broker. *Tattershall*, Great James Street, Bedford Row; *Hoole & Co.*, Sheffield. Nov. 2.
- Shaftoe, Henry, and William Clarke, Bishop Wearmouth, Durham, Brewers. *Swain & Co.*, Old Jewry; *Young & Co.*, Bishop Wearmouth. Nov. 2.
- Senior, John, Liverpool, Iron Merchant. *Sharpe & Co.*, Bedford Row; *Harvey & Co.*, Liverpool. Nov. 5.
- Stevenson, William, Sheffield, York, Auctioneer and Commission Agent. *Wilson*, Southampton Street, Bloomsbury; *Wilson & Co.*, Sheffield. Nov. 5.
- Shepherd, John Longman, and Henry Drew, Southampton, Innkeepers. *Walker*, Southampton Street, Bloomsbury; *Deacon & Co.*, Southampton. Nov. 5.
- Saunders, Peter, Kingston-upon-Hull, Merchant. *Gibson*, Off. Ass.; *Parker*, St. Paul's Church Yard. Nov. 9.
- Scott, John Thomas, Parroek Street, and Constitution Crescent, Milton, next Gravesend, Kent, Estate Agent, Hotel, Boarding, and Lodging-house Keeper. *Gibson*, Off. Ass.; *Gregson & Co.*, Angel Court, Throgmorton Street. Nov. 9.
- Sheridan, Bernard, Liverpool, Provision Dealer and Grocer. *Adlington & Co.*, Bedford Row; *Littledale & Co.*, Liverpool. Nov. 9.
- Salford, William Walker, Stockport, Chester, Timber Merchant and Builder. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Nov. 12.
- Sloane, Eccles, York, Linen and Woollen Draper. Messrs. *Baxter*, Lincoln's Inn Fields; *Pearson*, York. Nov. 12.
- Straker, William, West Strand, Bookseller. *Gibson*, Off. Ass.; *Hopkinson*, Red Lion Square. Nov. 16.
- Soulby, Anthony Morland, St. Mary-at-Hill, London, Wine Merchant. *Green*, Off. Ass.; *Ogden*, St. Mildred's Court, Poultry. Nov. 16.
- Spencer, Joseph, Lamb's Conduit Street, Chemist and Druggist, and Coal Merchant. *Lackington*, Off. Ass.; *Foord*, Pinner's-hall, Old Broad Street. Nov. 19.
- Strutt, John, Argyle Street, Argyle Square, Lodging-house Keeper; *Groom*, Off. Ass.; *Platts*, Southampton Buildings, Chancery Lane. Nov. 19.
- Tulay, John, Manchester, Merchant, Tailor and Draper. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Nov. 5.
- Thomas, Richard, Wick, Glamorgan, Maltster. *Lewis*, Bridgend; *Wrentmore*, Lincoln's Inn Fields. Nov. 9.
- Taylor, Henry, Ashton-under-Lyne, Lancaster, Hat Manufacturer. *Clarke & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under-Lyne. Nov. 9.
- Turk, George, Cheltenham, Gloucester, Saddler and Harness Maker. *Stiles*, Cheltenham; *Carter & Co.*, Raymond Buildings, Gray's Inn. Nov. 16.
- Watson, Richard Barret, Leeds, York, Share Broker. *Wilson*, Southampton Street, Bloomsbury; *Payne & Co.*, Leeds. Nov. 2.
- Wilson, George, Lindley, Huddersfield, York, Woollen Cloth Manufacturer and Cloth Finisher. *Edge*, Clement's Inn; *Sykes*, Miln's Bridge, near Huddersfield. Nov. 2.
- Welford, Richard Griffiths, Strand, Middlesex, Printer. *Alager*, Off. Ass.; *Wilkinson*, Lincoln's Inn Fields. Nov. 12.
- Winterbourn, Thomas, Albemarle Street, Piccadilly, Hotel and Tavern-keeper. *Johnson*, Off. Ass.; *Cookney*, Lamb's Conduit Place. Nov. 12.
- Watkins, William, jun., Leamington Priors, Warwick, Wharfinger and Coal Merchant. *Parkes & Co.*, Verulam Buildings, Gray's Inn; *Cope*, Leamington Priors. Nov. 12.
- Walker, Joseph, Newbold Moor, Chesterfield, Derby, Earthenware Manufacturer. *Lucas & Co.*, Chesterfield; *Spence & Co.*, Alfred Place, Bedford Square. Nov. 12.
- Watson, John Tomas, Worcester, Linen Draper. *Hardwick & Co.*, Cataton Street; *Hydes & Co.*, Worcester. Oct. 26.
- Willmott, Philip, Blackfriars Road, Surrey, Linen Draper. *Whitmore*, Off. Ass.; *Hartley*, New Bridge Street. Nov. 9.
- Worrell, John, Sussex Street, Tottenham Court Road, Victualler. *Turgand*, Off. Ass.; *Parnell*, Church Street, Spitalfields. Nov. 9.
- Wilson, Carrington, Wickham Brook, Suffolk, Innkeeper and Malster. *Chalk*, Chelmsford, Essex. Nov. 9.
- Walters, Thomas, jun., Swansea, Glamorgan, Grocer. *Williams & Co.* Swansea. Nov. 9.
- Wade, Joseph, Rugby, Warwick, Currier. *Moore*, Nottingham; *Helme & Co.*, New Inn. Nov. 19.

PRICES OF STOCKS.

Tuesday, Nov. 23d, 1841.

Bank Stock div. 7 per Cent.	- - - - -	165.
3 per Cent. Reduced	- - - - -	87½ a 87
3 per Cent. Consols Annuities	- - - - -	88½ a 9½ a 87
3½ per Cent. Reduced Annuities	- - - - -	97½ a 87
New 3½ per Cent. Annuities	- - - - -	99 a 8½ a 87
Long Annuities, expire 5th Jan. 1860	- 12½ a	17
Annuities for 30 years, expire 10th Oct. 1859	- 12½	
India Stock, div. 10½ per Cent.	- - - - -	249
Ditto Bonds 3½ per Cent.	- - - - -	3s. a 2s. pm.
South Sea Stock, div. 3½ per Cent.	- - - - -	98
3 per Cent. Cons. for acct. 25th Nov.	- - - - -	89 a 87
Exchequer Bills 1000l. a 2½d.	- - - - -	9s. a 10s. pm.
Ditto 500l. do.	- - - - -	11s. a 9s. pm.
Ditto Small do.	- - - - -	10s. a 11s. a 9s. a 12s. a 9s. pm.

The Legal Observer.

SATURDAY, DECEMBER 4, 1841.

——— “*Quod magis ad Nos
Pertinet, et nescire malum est, agitamus.*”

HORAT.

REFORM IN CHANCERY.

By stat. 3 & 4 W. 4, c. 94, s. 22, the Lord Chancellor may, with the advice of the Master of the Rolls and Vice Chancellor, or one of them, make such general orders as they shall think fit, for simplifying, establishing, and settling the course of practice of the Court of Chancery, and of its several offices; and by s. 23, from time to time to annul, alter, or vary such orders, and to issue new rules or orders.

By the stat. 3 & 4 Vict. c. 94, the Lord Chancellor, with the advice and consent of the Master of the Rolls and the Vice Chancellor, may make, at any time within five years from the passing of the act, such alterations as may seem expedient in the form of writs and commissions, and the mode of sealing, issuing, executing and returning the same; and also in the form and mode of filing bills, answers, depositions, affidavits and other proceedings; and in the form and mode of obtaining discovery by answer in writing or otherwise, and in the form and mode of pleading, and in the form and mode of obtaining evidence, and generally in the form and mode of proceeding to obtain relief, and in the general practice of the Court with relation thereto, and also in the form and mode of proceeding before the masters, and in the form and mode of drawing up, entering, and enrolling orders and decrees, and of making and delivering copies of pleadings and other proceedings, and to make such regulations as to the taxation, allowance and payment of costs, and for altering, superintending, controlling and regulating the business of the several offices of the Court, and also of collecting the fees payable to the suitor's fee fund, and for directing payment into the suitors' fee fund of the copy money now received by any of the officers to their own

use, and otherwise for carrying into effect the said alterations as to them may seem proper. By s. 2, additional officers, clerks and messengers “in any of the present or future offices of the Court” may be appointed. By s. 3, the present and future salaries and expences of writing for the Court are to be paid out of the suitors' fund; and by s. 4, compensation for the diminution of the emoluments of offices in consequence of alterations under the act, is to be made out of the suitors' fund. By stat. 4 & 5 Vict. c. 52, this latter act is recognised and extended.

It will be seen, therefore, that the legislature has given ample power to effect the most extensive change in the pleading and practice of the Court of Chancery, and we believe that the work is now to be taken in hand in earnest. As we have already mentioned, Lord Langdale, Vice Chancellor Wigram, Mr. Pemberton, and Mr. Sutton Sharpe, have received the Lord Chancellor's instructions to enquire what can be effected for the benefit of the suitors in Chancery under these acts. When we remember that it is to these learned persons that the country is mainly indebted for the valuable body of evidence taken before the committee of the House of Lords in 1839, in which such care was taken to come at correct conclusions, and through which so many important conclusions were come to, we cannot think that this subject could have been entrusted to more competent, careful, or experienced persons. We take some credit to ourselves for bringing before the profession an extensive plan of improvement in the practice of the Court, and thus smoothing the way for the adoption of proper alterations, more especially in the Master's Offices — provoking discussion as to the whole question — and rendering it familiar to the minds of the profession. We

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firmly believe that a scheme which falls far short of what was proposed by our correspondent, so far as the Master's Office is concerned, will not meet the justice of the case; and we do not by any means despair of seeing it entirely carried through.

There appears indeed, to us, to be no inconsiderable degree of movement in the profession at the present time. It reminds us more of the commencement of our work than any other period. Since the year 1834, in which almost every part of the law was altered, reform has, in this respect, gone on at a foot pace; each session has produced perhaps one important act, and no more. But if we are not much mistaken, the approaching session will see very considerable changes accomplished. Be it our care to see that this desire for change shall bring forth good, and not evil, fruit.

ABSTRACTS OF TITLE.

SALE OF LEASEHOLDS.

WHEREVER the vendor of a leasehold estate does not intend to produce his lessor's title, he should state such intention in the conditions of sale, or in the agreement for the lease. In the absence of any such stipulation a lessor cannot compel specific performance of an agreement for a lease, without producing the title to the inheritance,^a except in the case of a bishop's lease.^b Neither will a sale of leasehold property be enforced in a court of equity unless the vendor show his title.^c In a court of law, however, a different rule was laid down, and the purchaser could not recover his deposit on account of such title not being produced, unless the vendor had expressly contracted to furnish his lessor's title. But this decision has been over-ruled; and it has been decided that, unless there be a stipulation to the contrary, there is in every contract for the sale of a lease an implied undertaking to make out the lessor's title to demise, as well as that of the vendor's to the lease itself, which implied undertaking is available at law as well as in equity; and this is not rebutted by any presumption as to the intention of the parties deducible from the small portion of the time remaining unexpired, the small value of the property, or the absence of any premium for the lease.^d

Where there is a stipulation that the purchaser shall not be at liberty to call for

the production of any title^e prior to the lease, the vendor must, of course, produce the lease and the title subsequent; and it is the duty of the purchaser to inquire into the covenants and stipulations of the original lease. Therefore, where leasehold property about to be sold was described in the particulars of sale as being held at a ground rent of 86*l.* per annum, and it appeared from the lease that the ground rent was 80*l.*, and one-third of the improved yearly rent or value, and there were other stringent covenants in the lease, not noticed in the particulars, it was decided, nevertheless, that the purchaser must be held to his contract.^f

If the lease has been made under a power, the purchaser should invariably call for the deed in which the power is contained.^g

The right to the production of the lessor's title may be waived by the conduct of the purchaser.^h

When the contract is between the assignor and the assignee of a lease, the general opinion seems to be, that if the assignor can compel the production of the freehold title, the assignee will be entitled to the production of it;ⁱ and where it is impossible for him to do so, a purchaser may recover his deposit and costs.^j

As bearing on this subject, we may mention, it is a well settled rule, that though premises are destroyed by fire, rent is still payable. *Baker v. Holzappel*, 4 Taunt. 45. In *Izon v. Gorton*, 5 Bing. N. C. 501, it was held, where a floor in a house was destroyed by fire, that notwithstanding such destruction, inasmuch as the space inclosed by the four walls remained, and on the event of the re-building the tenant would have a right to re-enter, the obligation must be reciprocal, and he therefore liable to the rent after that fire, in an action for use and occupation. In *Packer v. Gibbons*, 1 Gale & Dav. 10, the same rule was followed; and it was held, that where an upper floor of a house was occupied at a rent payable quarterly, and during the currency of a quarter the house was burnt and rendered uninhabitable, in an action for use and occupation, the plaintiff having recovered for the occupation up to the time of the fire from the quarter day preceeding, it was held that he was entitled to recover for that period at least. *Packer v. Gibbons*, 1 Gale & Dav. 10.

^a *Filder v. Hooker*, 2 Meriv. 435.

^b *Fane v. Spencer*, 2 Madd. 438.

^c *Purvis v. Rayer*, 9 Pri. 488.

^d *Souter v. Drake*, 5 B. & Adol. 992.

^e As to the effect of such a stipulation, see *Shephard v. Keatley*, 1 C. M. & R. 117.

^f *Pope v. Garland*, 4 Yo. & C. 394.

^g 2 Prest. Abs. 9.

^h See *Haydon v. Bell*, 1 Beav. 337; *Warren v. Richardson*, 1 Yo. 1.

ⁱ See *White v. Foljumble*, 11 Ves. 337.

^j *Flureau v. Thornhill*, 2 Wm. Bla. 1078.

EFFECT OF THE NEW CHANCERY ORDERS.

DISTRIBUTION OF JUDICIAL BUSINESS.

UNDER the Orders of the 11th November, by which a plaintiff was authorized to select at his option any one of the three Vice Chancellors, some difficulty has arisen in consequence of a preference being given to one of the Courts, by which an undue share of business has been thrown upon it. The subjoined direction was, consequently, given by the Court last week, regarding the setting down of new causes, which will partially relieve the pressure.

We think the plaintiff is entitled to choose his Court, not only on account of the Judge who presides, but of the counsel whom he has retained. We trust, therefore, that the General Orders of the 11th November will be continued, and that any temporary inconvenience will be removed by special regulations. Parties aggrieved may, of course, apply to the Court under any peculiar circumstances, where the case is important and requires an early hearing.

SETTING DOWN CAUSES.

The following notice has been put up at the Registrars' Office:—

"That all causes set down, and to be set down before the first day of December next, and which shall not be attached to the Court of any Vice Chancellor, in pursuance of the Orders of the eleventh of November instant, before the said first day of December, shall on that day be assigned by the registrars in the lists required by the last order of the eleventh November instant, to be made out by them to the Courts of the respective Vice Chancellors, according to the rotation adopted in the existing printed book of causes, with reference to the causes set down to, and inclusive of the cause, '*Hodges v. Daly*.'"

DISPENSING WITH ANSWERS.

We have heard many observations on the effect of the 23d Order of August, in regard to dispensing with answers from defendants of whom "no account, payment, conveyance, or other direct relief is sought." Mr. Daniel, Mr. Sidney Smith, and an Anonymous Writer (we believe a solicitor), have stated many objections to the new practice, which they think will occasion more expense in one way than it will save in another. We shall take an early opportunity of considering this and other principal branches of the Orders of August.

CREDITORS' COSTS AND INTEREST.

A correspondent observes, that the 46th and 47th Orders of the 16th of August are truly good, and doubtless deserve, for the sake of

the public and the good credit of the profession, to take effect. It is well known in the profession, that a simple contract creditor coming before the Master to establish his claim was, under the *late* practice, at the entire expense of so establishing his claim; and, in addition thereto, was not allowed interest thereon, though, perhaps, it might have been owing for some few years.

[Is this allowance of interest and costs *prospective* only, or *retrospective*? The language of the 46th Order, as to interest, is different from the 47th as to costs. Ed.]

WILLS IN FAVOUR OF CONFESSORS.

A POINT of some interest was discussed in a recent case, as to how far a confessor came within the principle of the rules hitherto applicable with respect to wills to guardian and ward, and attorney and client. "Every man," said Lord Abinger, C. B. "makes his will under some influence or another. In the case of General Yorke, who left his property to his groom, Mr. Justice *Chambre*, who tried the cause, and who was the best lawyer of his day, told the jury he hardly knew what undue influence was. The jury found for the defendant, and that verdict was confirmed. See 9 Ves. 185. Again, in *Lord Trimblestown's case* it was said that the will had been obtained by his wife's influence, and the jury found a verdict against the will; but the verdict was afterwards set aside in the House of Lords. No doubt the cases of attorney and client, guardian and ward, stand on different principles, and the case of confessor is now presented, for the first time, as analogous to these. He certainly has the highest species of influence, and that influence may be fraudulently used;" and Lord Abinger afterwards went into the point more at length. "It was very much argued before me, that the relation in which the parties stood to each other made it difficult even to sustain the will. Now, upon that subject, I am prepared to say, that I do not think mere influence is enough to set aside a will. All wills are made under some kind of influence—the influence of affection or attachment, which is perfectly legitimate. If a man makes a will under that influence to exclude his own family, and give his estate to a stranger, I do not apprehend such a will could be displaced at law or in equity. The question therefore is, as to the degree of influence. It must be such a degree of influence, if you choose to call it by that name, as deprives the testator of being the proper master of his own faculties. A degree of influence arising from strong fear, and from threats or menace, would, I think, be undoubtedly sufficient to set aside the will, and make it void at law; so would a degree of influence arising from partial insanity or delusion upon a particular subject. There was a celebrated case which I remember, though I do not think anybody whom I have now the honour to

address will remember it (I am, unluckily, now one of the oldest in the profession). There was a case of *Greenwood v. Greenwood* cited by Lord *Erskine*, C., 13 Ves. 19; and see 3 Bro. C. C. 444; where a gentleman not only of considerable capacity, but of extraordinary talent, who had much distinguished himself at Cambridge, having taken a high degree and high honour there, and who also, in general society, was considered a man of considerable learning and acquirements, had taken a prejudice against his own brother. He thought that his brother meant to poison him. There was no other subject in the world upon which he was under a delusion; but it was quite clearly established that upon that subject he was so. There were three or four trials about it, and upon one or two occasions the will was set aside. I believe it was afterwards established, the jury not believing that he was under a delusion at the time he made the will; but still it was a case in which it was admitted, that, if he had been under a delusion upon that subject at that time, the will would have been bad. That is an instance where a man makes his will under the influence of strong passion, which is altogether unfounded—jealousy, or fear of another individual—that is, of partial insanity, which, if it governs the man in the act he is doing, ought to make it void. So with respect to a delusion arising (which is suggested in the bill, though it is undoubtedly answered by the affidavits,—it is a matter to be tried)—a delusion arising from superstitious terror. I can easily conceive a case of a man of very strong mind being under the influence of such a superstitious terror or delusion, as that he might think it necessary to his salvation that he should give all his money to his priest or confessor. If that was clearly established, I am by no means prepared to say that it would not be a very sufficient ground; and were I the judge directing the jury upon the subject, I should say that if they found it to be such a degree of delusion as to deprive the man of the exercise of his free judgment in what he was doing, it would be sufficient to destroy the will. A case has been cited for the purpose of shewing that: that of *Huguenin v. Baseley*. I remember that case well. I was present when Lord *Eldon* decided it. I knew the defendant, Mr. Baseley. He was a clergyman of the Church of England, and a very respectable man. Mr. Sharpe has quoted, very properly, the argument of Sir S. Romilly in that case against the will, and he has taken up Sir S. Romilly's suggestion. He has shewn that by the French law, or the law existing over the greatest part of the Continent where the Roman religion prevails, a gift made to a confessor, or even a legacy given to a confessor, would be void by reason of the relation of the parties. Now you will observe upon looking at that case, that Lord *Eldon* altogether evades that part of the subject, though he decreed the gifts made to Mr. Baseley to be set aside. That was during the lifetime of Mrs. Hill. She had married the plaintiff, and joined with him in filing the bill. The Lord Chancellor

set them aside; but he put it on the ground that Mr. Baseley had shewn, by his own conduct, that he had acquired the management of her affairs; that he stood in the relation of a confidential agent, having the direction and management of her affairs, and he founded his judgment on a letter which Mr. Baseley had caused her to write to her solicitor, dismissing him. Her former solicitor, who had never misconducted himself, was dismissed by a letter which she wrote, and which had been copied by her from one which Baseley wrote for her, in which she stated that providence had presented her with a kind friend, a person who was competent to manage her affairs—that she should have no further occasion for her solicitor, and that she wanted to put the whole of her affairs into Mr. Baseley's hands. The Lord Chancellor considered that Baseley had himself caused her to write the letter, and that he had got possession of her affairs, and therefore he brought it within that class of cases which have determined that a gift made under the influence of the confidential manager of a party cannot be sustained, being without consideration. Now it is to be observed in the present case that Sherburne stood in the relation, during a period which embraced all the transactions that I have mentioned, and which also embraces the time of making the will, he stood in the relation of confessor to Mr. Heatley. But he was more than that; it is plain from the facts stated and obtained from the whole body of the evidence, such as it is, that he had—I was about to say unlimited—but that he had very great control over Heatley's affairs; and the very fact I have mentioned that the sum of 10,000*l.* was paid to him, and that he bought an estate with it; that the 12,562*l.* was paid to an account in which he had a joint interest, and transferred from that account afterwards: and his own admission, that letters were written by him for the testator; that the testator, preferring his style to his own, often got him to write letters which he copied: all these are very strong facts to shew an interference in the management of his temporal affairs. Well, then, there is a very extraordinary fact, that one of the codicils contains the handwriting of Sherburne, and that is a codicil which fastens a condition on the plaintiffs, that they shall give a release to Sherburne within twelve months after his death, or the legacy shall go over. Now that is a very strong fact. I do not pretend at all to draw any inference from it, but it is very fit that a jury should be allowed to draw their inference from these facts. This gentleman stands in the most confidential relation which can subsist between a clergyman and a layman; namely, that of confessor to his friend, and unites with that character I should say, the character of confidential manager of his friend's temporal affairs. These are circumstances which require some consideration. If they go the extent of shewing that the will, or any of the codicils, was improperly made, or that they were all made under that degree of delusion, or that degree of terror which, in the opinion of a jury might

constitute a want of real capability to judge what he was about, then the will and the codicils would be void. If they are established, then there is an end of all farther inquiry." *Middleton v. Sherburne*, 4 Y. & C. 389.

POINTS OF LAW, BY QUESTION AND ANSWER.

AGREEMENTS.

[See page 53, *ante*.]

1. A verbal agreement to take ready furnished lodgings "for two or three years," is a contract for an interest in land, and valid for a lease not exceeding three years; but will not support an action for not entering on or occupying the demised premises. *Edge v. Stratford*, 1 Crompt. & J. 391; 1 Tyr. 294.
2. A promise to indemnify a co-surety, need not be in writing. *Thomas v. Cook*, 8 B. & C. 728.
3. By the 4th section of the Statute of Frauds, 29 Car. 2, c. 3, an agreement to pay the debt of another must be in writing, and contain the consideration for the promise, as well as the promise itself, and parol evidence of the consideration is inadmissible. *Saunders v. Wakefield*, 4 B. & Ald. 595.
4. An agreement to occupy lodgings at a yearly rent, payable in quarterly portions, the occupation to commence on a future day, is an agreement relating to an interest in land, within the meaning of the fourth section of the statute. *Immun v. Stamp*, 1 Stark. 12.
5. The assignment of a copyright under 8 Ann. c. 19, must be in writing. *Power v. Walmer*, 4 Camp. 8.
6. An agreement for the sale of wheat at that time unthrashed, and to be delivered at a future time, is not within the 17th section of the Statute of Frauds. *Clayton v. Andrews*, 4 Burr. 2101.
7. The defendant purchased certain leasehold premises at an auction, and signed a memorandum of the purchase on the back of a paper, containing the particulars of the premises, the name of the owner, and the conditions of sale; and it was held, that the defendant was bound by his contract, notwithstanding it was not signed by the vendor. *Lagthorpe v. Bryant*, 2 Bing. N. C. 735.
8. A subsequent ratification by a principal of a contract by an agent, is equivalent to a previous authority. Thus a broker made a contract in writing of the sale of goods, not being authorized by his principal at the time, but to which the latter afterwards assented: and it was held, that the broker was an agent duly authorised to bind his principal under the Statute of Frauds. *Maclean v. Dunn*, 4 Bing. 722; 1 Moo. and P. 761.
9. A bill of parcels, in which the name of the vendor is printed, and that of the vendee written by the vendor, is a sufficient memorandum of the contract, within the Statute of

Frauds, to charge the vendor. *Schneider v. Norris*, 2 Mau. & S. 286.

10. An auctioneer writing down the name of the highest bidder for goods in his book, is a sufficient signature to satisfy the Statute of Frauds. *Hinde v. Whitehouse*, 7 East, 558.
11. Where a broker is authorised by one person to sell goods, and by another person to buy such goods, an entry in his books of a sale from the one to the other, signed by him, is a binding contract between the parties. The bought and sold note, which is a copy of this entry, is not sent to the parties for their approbation, but to inform them of the terms of the contract. *Heyman v. Neale*, 2 Camp. 337.
12. If the purchaser of goods, at the time of the sale, write his name upon a particular article, with an intent to denote that he has purchased it, and to appropriate it to his own use; this is enough to take the sale, as to the article written upon, out of the Statute of Frauds, but not as to other articles bought at the same time. *Hodgson v. Le Bret*, 1 Camp. 233.
13. If a party has entered into a parol agreement for a lease, and a draft of it is prepared, though the agreement is void under the Statute of Frauds, yet an indorsement referring to the lease, on the draft by the party, admitting the agreement, it being in writing is sufficient within the statute. *Shippey v. Derrison*, 5 Esp. 190.
14. An agreement, beginning, "I, A. B.," though not signed by the party, is good within the Statute of Frauds. *Knight v. Crockford*, 1 Esp. 190.
15. In cases of the sale of lands, the auctioneer is not to be considered as the agent for both parties, and, therefore his entering the name of the buyer of a lot of land in his book as the purchaser, is not a note in writing within the Statute of Frauds. *Stunsfield v. Johnson*, 1 Esp. 101; but see *White v. Proctor*, 4 Taunt. 209.

NOTICES OF NEW BOOKS.

Orders of the Court of Chancery, from Hilary, 1828, to Michaelmas, 1841, with Statutes and Notes. By S. Miller, Esq. H. Butterworth. 1841.

THE object of this compilation has been to concentrate under distinct heads all the New Orders in Chancery, with the decisions thereon. Mr. Miller has adopted an alphabetical arrangement, in order to render the various contents of the work of easy reference. For example, under the head of *Bill*, will be found all the orders relating to amendments, dismissals, interrogatories, and the marking of bills. The notes comprise all the decisions under each order.

Mr. Miller has also given an abstract of such statutes as have passed since 1828, bearing upon the several subjects comprised

in the orders, with the judicial decisions on such statutes.

All this seems to us to be very useful to the practitioner, and Mr. Miller has evidently bestowed great care in rendering his work accurate.

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The Legal Almanac, Remembrancer, and Diary, for 1842, containing a Law Calendar, and various lists and information, peculiarly adapted to facilitate Professional business. London: Spettigue. 1841.

The Contents of this edition of the Legal Almanac are as follow:

The Calendar.—The Superior Courts: Chancery; Queen's Bench; Common Pleas; Exchequer; Judicial Committee of the Privy Council; Admiralty; Ecclesiastical; Bankruptcy; Central Criminal; Insolvent Debtors.—Patent Office; Record Offices; Registries of Deeds; First Fruits Office; Tenth's Office; Commissioners for taking affidavits.—Holidays: Chancery Offices; Common Law Offices.—Terms and Returns.—Law Offices and Times of Attendance: Chancery Offices; Queen's Bench; Common Pleas; Exchequer; Admiralty and Ecclesiastical; Inferior Courts.—Quarter Sessions;—Police Magistrates and Commissioners;—Officers of the Houses of Parliament; Lords; Commons;—The Bar; Queen's Counsel and Serjeants; Barristers called, 1840—1841;—Regulations of the Inns of Court for the admission of Students and calling to the Bar;—Courts of Chancery selected by Queen's Counsel; Incorporated Law Society; Provincial Law Societies; United Law Clerks' Society; Perpetual Commissioners;—Magistrates and Law Officers of the City of London;—Government Solicitors;—Town Clerks;—Examiners of Articled Clerks;—Clerks of Peace;—Clerks to Magistrates;—List of London Bankers;—Colonial Judges and Law Officers;—Index to the Statutes relating to the Law;—List of Stamps;—Table of Distribution of Intestates' Estate;—Table of Expectation of Life;—Insurance Offices and Rates of Assurance.—Diary for 1842.

It will be observed that the additions made to the usual contents are the Regulations of the Inns of Court for the admission of Students and Calling to the Bar; the Courts selected by Queen's Counsel in Chancery, with the order of their precedence; lists of the new appointments; the Solicitors of Government Boards, and the Examiners of Articled Clerks, with an Index to the statutes of the last two sessions of parliament relating to the law.

It may be useful to extract the following list of the Government Solicitors, shewing

how many are held by barristers, and how many by attorneys. We lately gave our reasons for preferring attorneys to barristers in filling those offices which require practical experience.

Customs.—Joseph Green Walford, Esq.*

Excise.—William Knight Dehany, Esq.*

Philip Wynell Mayow, Esq.†

Mint.—Joseph Blunt, Esq.†

Ordnance.—John Hignett, Esq.†

Post Office.—Mark B. Peacock, Esq.†

Stamps and Taxes.—Joseph Timm, Esq.†

Treasury.—George Maule, Esq.*

Charles Bourchier, Esq.*

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Index Legum, or Index of Legal Subjects, to aid the Student and Practical Lawyer in easily registering and readily referring to his professional reading and practice: with an Introduction on its plan and use. London: Spettigue. 1841.

There is no doubt that the diligent student will find great benefit to result from the judicious use of *note* and *common place* books. Some things of great importance he will copy exactly; others he will abstract either fully or concisely. Still there was wanting both for the student and the practitioner an *Index* in which they may set down alphabetically short references to the more important parts of the works they study,—the results of their reading and research,—and such notes, queries and hints, as they may wish to preserve for further investigation.

The present work supplies this want. The plan is good, and the index well adapted to the purpose. The introduction is well written, and clearly explains the proper method of concisely making the entries, and the examples given shew their utility.

The design of the work seems pithily expressed by the editor in the following short extract from his Introduction.

"Professor Hoffman, in his 'Course of Legal Study,' an American work of equal labour and learning, has suggested *eight* distinct note books on the law, to be simultaneously kept by the lawyer, and has given specimens of each. The student will be stimulated to the less arduous labours now offered him by referring to the Herculean task which an American Professor imposes on the young republican lawyer: he will find it in Hoffman, vol. 2, pp. 776, *et seq.* It is, however, my conviction, that more practical advantage will be permanently secured by the same steady industry in the daily use of this one Index, with the occasional aid of the Common Place Book."

Marked thus * are Barristers, and thus † Solicitors.

DISTRINGAS ON STOCK.

Mr. Editor,

THE innovations, with regard to *distringas* upon stock, are any thing but improvements, —practical illustrations are worth a hundred theories.

Being entitled to the reversion of stock, standing in the names of two executors, I placed a *distringas* upon it. It was in the Four per Cents. An act of parliament was passed to change the Four per Cents into 3½, giving parties (executors or others) the option of receiving 100l. new stock, or 100l. money, for each 100l. old stock.

In this case, one of the executors died, the survivor, a female, paid a visit to the Bank, and being told that she might receive stock or money, with much innocence, preferred the *latter*, and walked off with it. The act of parliament having extinguished my *distringas*, I had much difficulty to persuade her to replace it, without resorting to the solemn tedium of a suit in Chancery.

As I read the new act, a *distringas* will last only eight days after the Bank has been requested to remove it, by the party in whose name the stock is; and of this removal, the Bank is bound to give no notice to the party *distringing*. So that, fettered as it is by the preliminary oath, the wholesome writ of *distringas* may be said to be virtually abolished.

It is hoped, testators will read a useful lesson from this, leave a sufficient number of trustees, and provide for a substitution, whenever one dies. It is when the fund gets into one name only, that the temptation to do evil arises, and which this new-fangled laxity of the legislature will much encourage.

CIVIS.

LAW OF FRANCE.

MARRIAGE SETTLEMENT.

A CASE has been recently decided by the "Tribunal de Premiere Instance" of Paris, which may interest many of our readers.

The settlement of the property of an English lady, made upon her marriage with a foreigner (an Italian), prepared by an English solicitor in Paris, according to the English form, and executed with all English formalities, has been held invalid, as not being a notarial deed, and clothed with the formalities required by French law (*locus agit actum*).

The property settled had been invested in the French funds in the names of the English trustees, and of the wife, and was attached by the French creditors of the husband.

Our readers will perceive how dangerous it may become for trustees to invest a trust fund in French stock, while the execution of the settlement cannot be distinctly proved to have been in England, or to have been valid according to the law of the country where it was executed. The French mode of settlement differs so materially from our own, that it be-

comes next to impossible to reconcile the two, so as to obtain the notarial sanction to the execution of the deed, which alone can render it, if executed there, valid in France.

We state the above case on the authority of Mr. Okey, Counsel to the British Embassy at Paris.

CONSTRUCTION OF TITHE ACT.

To the Editor of the Legal Observer.

Sir,

I beg to call your attention to the Tithe Commutation Act, 6 & 7 W. 4, c. 71. In the provision for the appointment of valuers for the purpose of apportioning the rent-charge, sect. 32, it is enacted, "that at the said meeting (the meeting at which the agreement is executed) or at some other parochial meeting to be called in like manner, either before or after the confirmation of the agreement, the owners of lands subject to tithes in the said parish or their agents present at the meeting, may appoint a valuer or valuers; and in case the majority in respect of number, and the majority in respect of interest, shall not agree upon the appointment, then they shall appoint two, or such other even number of valuers, as shall then be agreed upon by such landowners then present. In the 33d sect., it is enacted, that as soon as may be after the choosing of such valuer or valuers, and after the confirmation of the said agreement, the valuer or valuers so chosen shall apportion the total sum agreed to be paid by way of rent-charge instead of tithes, and the expenses of the apportionment, amongst the several lands in the said parish, according to such principles of apportionment as shall be agreed upon at the meeting at which the valuer or valuers shall be chosen, or if no principles shall be then agreed upon for the guidance of the valuer or valuers, then, having regard to the average titheable produce and productive qualities of the land, according to his or their discretion or judgment; but subject in each case to the provisions thereafter contained, and so that in each case the several lands shall have the full benefit of every modus and composition, real, prescriptive, and customary payment; and of every exemption from or non-liability to tithes to which the said lands are severally liable: provided that it shall be lawful for the said valuers, when an even number is chosen, by any writing under their hands, to appoint an umpire before they proceed on the business of such apportionment, and the decision of the umpire on the question in difference between the valuers shall be binding on them in the apportionment."

Some doubt is entertained as to the proper construction to be put on the words "average titheable produce and productive quality of the land," as the section is silent as to whether the average is to be the seven years preceding Michaelmas 1835, or whether the

average is to be left to the discretion of the apportioner. Supposing that the average of the seven years preceding 1835, is the meaning of the word "average," it will then, in some measure, accord with the mode of ascertaining the total rent-charge to be paid in lieu of tithes, in case of an award by the commissioners. And it will then be a question whether in the case of the tithes of the parish having been commuted on the commutation paid for tithes during the seven years' average, the tithes should be apportioned on the average tithe commutation paid for tithes during the seven years preceding 1835; or whether, under the terms "titheable produce and productive quality of the lands," it will be necessary to value the produce derived from the land during the seven years preceding Michaelmas 1835, and also value the lands in regard to their present productive quality? Should the average or period of years over which the averages are to extend be left to the apportioner, he will be at liberty to select his own period for the valuation, and it would be very difficult to check the apportionment, or to appeal against it. As the prices of corn are now so fluctuating it is of some importance that some certain opinion should be expressed on the subject. Where tithes have been paid in kind during the seven years, the same questions would probably arise. Much doubt and difficulty, as well as expense, may be saved to numerous landowners, could some certain mode of construction be pointed out, or the mode of apportionment intended by the act be clearly explained.

A LANDOWNER.

THE TERMINATION OF MICHAELMAS TERM.

THE sudden termination of Michaelmas Term, at the unusual hour of eleven o'clock in the morning by Lord Denman, has caused a considerable sensation, both with the profession and the public. We are rather surprised to see that Lord Denman has been blamed by some of the newspapers for his conduct in this matter. The public would, we conceive, come to a very different opinion if they knew the real state of the case. There is a considerable arrear of business in the Queen's Bench, and the Judges are doubtless anxious to reduce it; and we must say, that it is the duty of the Bar to assist them to the uttermost in accomplishing this wish. Now, do they so? We would ask any one in the habit of attending this Court if there is not frequently very great difficulty in proceeding with business, arising from the absence of the leading counsel. The Judges do all they can to get them to attend—they remonstrate, they linger, they complain: all without effect—at last they *act*, and pro-

bably they may now be attended to. If the administration of the law were to be carried on purely for the benefit of the profession, the practice of the Bar in this respect might be all very well; but is not the suitor to be considered a little in this matter? He is told that his cause is put off till next term by reason of the absence of counsel: his attorney tells him that he retained such a counsel, and that if the cause had only come on, all would have been right; but that, unfortunately, he was not there. What are his feelings on the occasion? They are not the most agreeable, and surely deserve consideration. Now, if all this grumbling were to end in nothing; if the suitor must bear it, we should not say a word; but we have repeatedly pointed out the remedy. The leading Common Law Counsel should fix on some one of the Superior Courts (as the Queen's Counsel in the Courts of Chancery have recently done) and adhere to that. We should then hear no more of the Court's adjourning from the absence of counsel. Whether this would injure the individual Queen's Counsel, we do not know. We conceive not. Was Mr. Knight Bruce injured by confining himself to the Vice Chancellor's Court? We believe that his profits were as great as those of any man of whom there is authentic record. But if the counsel were injured, we humbly conceive that this is a case in which the superior claim of the public comes in, and the particular interest must give way. We trust, therefore, that the result of the present sensation may be that the course we have pointed out may be adopted.

MOOT POINT.

ACKNOWLEDGMENT OF DEEDS BY MARRIED WOMEN.

Observing an article at p. 26, *ante*, signed "A Country Attorney," on the above subject, I take leave to put the following case. In 1807 lands were conveyed to *A.*, to hold unto and to the use of *A.*, his heirs and assigns for ever, upon the trusts, &c. thereafter mentioned, being trusts for *B.* (husband) for life; remainder in trust for *C.* (wife) for life, and trusts over for children.

The deed contained a power to *B.* and *C.* during their joint lives, and for the survivor after the death of either, to "revoke and make void all and every or any of the uses, estates, or trusts thereby created, and by the same deed or any other to limit, declare, direct and appoint new uses, trusts, &c." Is it necessary, that in order to exercise this joint power effectually, the deed must be acknowledged by the wife?

A COUNTRY SOLICITOR.

ATTORNEYS TO BE ADMITTED,

Hilary Term, 1842.

QUEEN'S BENCH.

[Concluded from p. 58, ante.]

*Clerk's Name and Residence.**To whom articulated, assigned, &c.*

- Norton, Thomas, 4, Arthur's Street, Gray's Inn Road; and Shrewsbury.
- Norman, John, 35, Bedford Street, Covent Garden; Tamworth; and Stafford Cliff.
- Norris, Frederick William Nory, 27, Liverpool Street; and Halifax.
- Nicoll, Henry, 3, Middle Temple Lane.
- Newton, Alfred, St. Ives.
- Nicholls, Charles Kerry, now Charles Kerry Whittaker, 41, Strand; and Craven Street.
- Orlebar, Charles Daniel, 4, Compton Street, Tavistock Square.
- Owen, William, 9, New Ormond Street; and Rainhill.
- Pearson, Justly, Maize Hill, Greenwich.
- Pearse, James, 28, Allsop Terrace, New Road; Southmolton; and Featherstone Buildings.
- Pickup, John, Haslingden, Lancashire.
- Pell, George, the younger, 16, Smithfield Bars.
- Payne, James Edwin, 10, Upper Southampton Street, Pentonville; and Down Ampney.
- Peters, Edward, York.
- Preston, Arthur, 11, Wilmot Street, Brunswick Square; Norwich; and New Millman St.
- Pearse, John, 18, Arlington Street, Camden Town; Goldburn; and Okehampton.
- Powell, Thomas Wilde, 7, Tredegar Place, Bow Road; and Leeds.
- Pennington, William George, Ruthin.
- Ponsford, Henry, 5, Chester Terrace, Pimlico; and York Place, Pimlico.
- Rawlings, James, Exeter; and Heavitree.
- Rossiter, Ernest, Newbury.
- Ridley, John, Newcastle-upon-Tyne.
- Richards, Charles, 6, Diddington Place, Pantonsville; Wem; and Cadogan Street.
- Radcliffe, Richard, the younger, West Derby.
- Rogers, Thomas, the younger, 10, Myddleton Square; Helston; and Princes Street.
- Richardson, John, Thirsk; Leeds; and Moor-gate Street.
- Rands, George, 12, Guildford Street, Russell Square; and Luton.
- Rawlins, Thomas, 2, Queen Square; Harpur Street, Judd Street; and Cerne Abbas.
- *Redpath, Henry Syme, Queen Street Place.
- Sidney, William Henry Marlow, 3, Polygon, Somers Town; Stockton; Edward Street; and Southampton Place.
- Sidney, Philip Joseph Marlow, Stockton.
- Stileman, Richard, 23, Somerset Street, Portman Square.
- Stenning, Charles, 18, Trinity Terrace; and 277, Strand.
- Southgate, Francis Thomas, King's Street, Gravesend.
- Sills, Robert, 5, Warwick Court, Holborn; and Heaton Norris.
- William Wybergh How, Shrewsbury; assigned to Frederic Ouvry, Tokenhouse Yard.
- Felix John Hennez, Tamworth.
- James Edward Norris, Halifax.
- Richard Carpenter Smith, Bridge Street.
- George Game Day, Saint Ives.
- Henry Rodolph Wigley, Essex Street.
- George T. Railton Willoughby, Weymouth and Bath; assigned to Benjamin E. Willoughby, Clifford's Inn.
- John Shaw Leigh, Liverpool.
- Charles Hill Pearson, Serjeant's Inn, Fleet Street.
- John Gilbert Pearse, Southmolton.
- Thomas Woodcock, Haslingden.
- George Vincent, King's Bench Walk.
- George Eyre, Eweline.
- John Brook, York.
- Roger Kerrison, Norwich.
- William Burd, Okehampton.
- Thomas Townend Dibb, Leeds.
- Lawrence Desborough, Sise Lane.
- Wm. Gaisford, Berkeley; assigned to Henry Methold, Lincoln's Inn Fields.
- Mark Kennaway, Exeter.
- Broome Pinneger, Newbury.
- John Anderson Pybus, Newcastle-upon-Tyne.
- Thomas Dicken Browne, Wem.
- George James Duncan, Liverpool; assigned to Richard Radcliffe, the elder, Liverpool.
- Thomas Rogers, Helston.
- Thomas Richardson, Thirsk; assigned to George Rawson, the younger, Leeds.
- Frederick Chase, Luton.
- John Frampton, Cerne Abbas.
- Thomas Dean, Gray's Inn.
- Henry Hutchinson, Stockton.
- William Grey, Stockton.
- William Crawford Newby, Stockton.
- Thomas Henry Faber, Stockton.
- Richard Daves, Angel Court.
- Frederick Smith, King's Arms Yard.
- Francis Southgate, Gravesend.
- John Vaughan, Heaton Norris.

* Marked thus are Common Pleas applications. The rest are in the Queen's Bench.

Clerk's name and Residence.

Smith, Thomas, the younger, 21, John Street, Bedford Row; Gloucester; and Westbury.

Smith, John, Weyhill; and Castle Street, Bloomsbury.

Symonds, James Frederick, 20, Featherstone Buildings.

Sketchley, Samuel, 24, River Street, Pentonville; and East Retford.

Smith, George, the younger, Altrincham, Chester.

Searle, Edward, Cambridge.

Stubbs, Henry, 14, Castle Street, Holborn; and Nottingham.

Solly, James Smith, 12, Arbour Terrace, Commercial Road; and Sandwich.

Taunton, John, the younger, 29, Jewin Crescent; and Tavistock.

Taylor, George, 15, Park Terrace, Camden Town; and Dunkinfield.

Toogood, William, 22, Wilton Street, Belgrave Square; and Tavistock.

Thomas, Evan, 17, Great Ormond Street; Featherstone Buildings; Welfield House; Brecon.

Titterton, John, Bridgnorth.

Tourney, Stewart, 10, Ashley Terrace, City Road; Hythe; Tower St.; and Penton Place.

Vickers, James Benjamin, Manchester.

Upton, John Everard, 2, Henrietta Street, Covent Garden; and Leeds.

Urmson, John, 2, Frederick's Place, Gray's Inn Road; Warrington; and Kenton St.

Walsh, William Henry, 29, White Street, Little Moorfields; and Leather Sellers' Buildings.

Weightman, James Milward, Sunbury; and Oddie's Row, Islington.

Whittaker, Charles Kerry, 41, Strand; and Craven Street.

See Nicholls.

Woods, John, Liverpool.

Walsham, Richard, Hesse, Yorkshire; Stamford Street; and Whyton.

Wortham, Cecil P., the younger, 4, Hertford Cottages, West Hackney; and Buntingford.

Wallington, Richard Archer, 24, Clermont Terrace; Cloudeley Street; Warwick; Felix Terrace, Islington.

Williams, William, Bala, Merionethshire.

Williams, George Henry, 3, Regent Place West, Regent Square; Eye; and Amwell Terrace.

Walsh, James William, Westbourne Green.

Young, Robert Morgan, 13, Great Ormond Street.

To whom articulated, assigned, &c.

Thomas Smith, the elder, Gloucester; assigned to William Henry Trinder, John Street.

Charles Bailey, Winchester; assigned to Charles Parker, Lincoln's Inn Fields.

Samuel Beale, Upton-upon-Severn; assigned to George Hall, New Boswell Court.

John Nice, East Retford.

George Smith, Manchester.

Henry Parker, Gray's Inn; assigned to Francis John Gunning, Cambridge.

Samuel Payne, Nottingham.

John Mourilyan, Sandwich.

Christopher Vickery Bridgman, Tavistock.

James Brown Brooke, Ashton-under-Lyne.

Christopher Vickery Bridgman, Tavistock; assigned to Francis E. S. Willesford, Tavistock.

David Thomas, Brecon.

Arndell Francis Sparkes, Bridgnorth.

Edward Sedgwick, Hythe; assigned to Charles Tudway, John Street.

Thomas Mortimer, Manchester.

Thomas Everard Upton, Leeds; assigned to John Upton, Leeds.

William Beaumont, Warrington.

Joseph Dobbins.

Walker and Grant, King's Road; assigned to Arthur Walker, King's Road.

Henry Rodolph Wigley, Essex Street.

Edmund Wilkinson, Liverpool; assigned to Robert Syers Christian, Liverpool.

Hugh Thomas Shaw, Ely Place.

Cecil P. Wortham, the elder, Buntingford.

Thomas Morris, Warwick.

William Williams Jones, Dolgelly; assigned to Rowland Williams, Dolgelly; assigned to Rice Owen Anwyl, Bala.

Thomas French, Eye.

Benjamin Goode, Howland Street.

John Adolphus Young, St. Mildred's Court.

Added to the List pursuant to Judge's Directions.

Ablett, William, 23, Bayham Terrace, Camden Town.

Bell, John Lee, 4, Mary's Place, Park Street, New Peckham; and Brompton.

George Truwitt, Cook's Court, Carey Street; assigned to John Bell, Vine Street.

Alfred Goddard, King Street.

William Carrick, Brompton.

Clark's Name and Residence.

Brett, Edward, 1, St. Martin's Place, Trafalgar Square; and Guildford Street.
 Crawley, Antony Gibbs, 8, St. Martin's Place, Trafalgar Square.
 Fletcher, John Stockton, 26, Wakefield St., Regent Square; and Rochdale.
 Greatley, John, Manchester; and Liverpool.

Jackson, William Simes, Shrewsbury; and Sidmouth Street.

Lumb, Frederick, Wakefield.

Street, John Widgery, Exeter.

Sudlow, Alfred, 21, Compton Terrace, Islington; and Coombe Bury Cottage, Kingston-upon-Thames.

Twigg, Edward, Burslem.

To whom articulated, assigned, &c.

Charles Goodwin, King's Lynn.

Henry Lewin, New Square, Lincoln's Inn.

James Richard Elliott, Rochdale.

William Lowe, Birmingham.

William Andrew, Manchester.

Jonathan Scarth, Shrewsbury.

Robert John Lumb, Wakefield.

Charles Henry Turner, Exeter.

John James Joseph Sudlow, Chancery Lane; assigned to William Fisher, Chancery Lane; assigned to Josiah Wilkinson, Chancery Lane.

John Ward, Burslem.

SUPERIOR COURTS.

Vice Chancellor of England's Court.

PRACTICE.—DISMISSAL OF BILL.

The pendency of an action at law, involving the same question as that for which a suit in this Court was instituted, will not prevent the Court from dismissing the bill for want of prosecution.

The bill in this case had been filed for an account, and to restrain certain proceedings at law in respect of the transactions stated in the bill, and no proceedings having been taken in the suit since the period when, according to the rules of the Court, the answer was deemed sufficient, and the plaintiff had become entitled to move to dismiss, a motion was now made to dismiss for want of prosecution.

Clark for the defendant stated, that the proceedings at law were likely to be speedily disposed of, and if his client succeeded in them, there would be no necessity for any further prosecution of the suit in this Court, and he therefore asked that the motion might stand over.

Martineau, *contra*, insisted upon the plaintiff's right to the order.

The Vice Chancellor said, the Court could take no notice of the proceedings at law, and the bill must therefore be dismissed, unless the plaintiff gave an undertaking to speed.

Major v. Boulden, Nov. 10th, 1841.

PRACTICE.—DEMURRER.

The Court will not advance a demurrer for the purpose of having it disposed of, with the view of allowing a motion on the part of a defendant that the bill may be revived within a given time, or be dismissed.

On the hearing of the original bill in this cause, an objection was taken for want of parties, on the ground of the representatives of a deceased person, who was interested, not being before the Court, and leave was given to

the plaintiff to amend. The plaintiff had accordingly amended, and had also filed a bill of revivor; and the defendant having demurred,

Shadwell now moved, *ex parte*, that the demurrer, which was filed this morning, might be set down to be argued on Wednesday next, so as to admit of a notice of motion for the next seal (that being the last before the long vacation) that the plaintiff, who had not obtained an order to revive, should revive within a given time, or that the bill might stand dismissed. He urged that the demurrer ought not to stand in the way of a bill of revivor, and cited the *Duke of Wellington v. Burnell*, 6 Sim. 461; *Canham v. Vincent*, 8 Sim.

The Vice Chancellor refused the application, and said the demurrer must be set down in the usual manner.

Strickland v. Strickland, July 24, 1841.

PRACTICE.—SECURITY FOR COSTS.

Where a plaintiff, after filing his bill, leaves this country for Canada, he will be required to give security for costs, although he may have expressed his intention of proceeding there only for a particular purpose, and of returning as soon as that purpose is accomplished.

The defendant in this case moved that the plaintiff might be required to give security for costs under the following circumstances:—It appeared by the affidavit of the defendant's solicitor, that up to the year 1839, the plaintiff had resided in Canada, but in that year had returned to this country, and had since occupied furnished lodgings; that he filed his bill about six months ago, and in August last left this country for Canada. In answer to the motion, affidavits had been filed on behalf of the plaintiff, in which it was stated that the plaintiff having property in Canada, had gone over to that country for the purpose of disposing of such property, and had expressed his intention of returning in about two years.

Kinglake, for the motion, contended that there was no sufficient proof to satisfy the Court that the plaintiff intended to return to

this country, and according to the rule laid down by Lord Eldon, the onus lies upon a plaintiff going abroad to shew that he does not intend to continue out of the jurisdiction.

Freezing, contra, urged that it was incumbent on the defendant to prove that the plaintiff had left this country with an intention to reside permanently abroad, whereas the affidavits in answer to the motion, shewed that the plaintiff was only gone for a temporary purpose, and cited *White v. Greathead*, 15 Ves. 2. The defendant had, also, since the plaintiff left the country, taken out a warrant for further time to answer, which expired the 23d September, and that was a material step in the cause.

The Vice Chancellor, said it appeared to be extremely doubtful whether the plaintiff would return, and, at all events, it was so uncertain, that it was a case in which security ought to be given.

Snook v. Duncan, Nov. 17, 1841.

PRACTICE.—INJUNCTION.—DEPOSIT OF DEEDS.

A tenant for life of certain estates which had been mortgaged, having brought his action against the party entitled to the fee, after the determination of the life estate, to recover possession of some of the deeds relating to the same estates: Held, that the Court could not interfere, although an offer was made for delivering up the deeds to the mortgagee, or depositing them in Court.

This was a motion for an injunction to restrain further proceedings in an action, which had been commenced against the plaintiff, to recover possession of certain deeds, and from the statements in the bill, and the affidavits, it appeared that the plaintiff, who was the son of the defendant, was the tenant in fee, subject to the life estate of his father, of the estates mentioned in the pleadings, and that they had both executed a mortgage of such estates to the Bank of England, for securing 42,000*l*. On the completion of this mortgage transaction, certain old leases and other muniments of title, which were not considered of importance to the title, were suffered to remain in possession of the defendant, and the plaintiff, having, as it was alleged, improperly obtained possession of them, and refused to deliver them up; an action was brought by the defendant, to compel their re-delivery to him, the proceedings in which it was now sought to restrain, and the plaintiff offered either to hand the deeds in question over to the mortgagees, or to deposit them in Court for safe custody.

Richards and Wilcock in support of the motion.

Stuart and Teed, for the defendant.

The Vice Chancellor said, that no case had been made out to warrant the interference of the Court. One of the affidavits stated that the Bank of England had all the deeds and documents relating to the title, which were considered material, delivered to them, and if the Bank of England could not claim the documents in question, there was nothing to show

that any person had a right to their possession, except the tenant for life, to whom counter-parts of leases might be of importance, while he continued in receipt of the rents, although of little consequence to the mortgagee. No doubt, if it could be shewn that the tenant for life intended to leave them in a place where they were likely to be injured or destroyed, the Court would interpose its authority, but no such case had been made out. No perverse conduct had been shewn on the part of the tenant for life, and his legal right must therefore prevail.

Stuart, having asked for the costs of the motion, his Honor said, that he considered himself as a sort of arbitrator, and, therefore, as between father and son, he should give no costs.

Bassett v. Bassett, Nov. 10th, 1841.

Queen's Bench.

[Before the four Judges.]

TRESPASS.—JUSTICES.—HIGHWAY.

An order of justices issued under the 5 & 6 W. 4, c. 50, s. 65, authorised the surveyor of highways to "cut, prune or plash" certain hedges therein described: Held, that such order was defective, because it did not follow the words of the statute, and direct the cutting of the hedges to be done in such a manner as to admit the sun and air to the highway, and the surveyors who had acted under it were held liable in trespass to the owner of the land.

Trespass for cutting down trees and a fence, Plea, not guilty, by statute. The cause was tried before Mr. Justice Patteson, at the Suffolk Summer assizes, in 1840, when it appeared that the plaintiff was the owner of some land in the parish of Hasketon, in which the defendants were the surveyors of the highways. Certain justices of the county of Suffolk, upon information laid before them, made an order requiring the plaintiff to plash, cut or prune a certain hedge and fence, near, &c., which so overhung a certain highway as to exclude the sun and air from the highway. The plaintiff upon this cut and pruned the hedge and fence to a certain extent, but it was contended not sufficiently. Information to this effect was accordingly laid before certain other justices, who thereupon made an order under their hands and seals, in which, reciting the statute 5 & 6 W. 4, c. 60, s. 65, and the information laid before them respecting the condition of the roads, and also of the trees on the plaintiff's land, ordered and directed the defendants as surveyors of the highways, to cut, prune or plash the plaintiff's trees. The defendants, acting under this last order, forthwith cut the trees growing in the hedges, whereupon the plaintiff brought this action of trespass. The jury returned a verdict for the defendant. A rule had since been obtained to set aside this verdict and have a new trial, on the ground (among others) that the justices' order did not authorise the defendants to do what they had done, and that the order was illegal and void on the face of it; particularly on the grounds,

first, that the defendants were ordered to "cut plash or prune the hedges, &c.," in the disjunctive; secondly, that the hedges to be cut were not pointed out with sufficient distinctness in the order, and thirdly that the order was generally to cut, prune or plash, and not to cut, &c. the hedges "in such manner that the carriage way or cart way shall not be prejudiced by the shade thereof, and that the sun and wind may not be excluded from such carriage way, &c."

Mr. B. Andrews and Mr. Byles shewed cause against the rule, and contended that the order was sufficiently clear and precise, and being made within the jurisdiction of the justices, formed a sufficient defence to this action.

Mr. Kelly and Mr. O'Malley appeared in support of the rule.

Lord Denman, C. J.—We must lament that in this, as in some other cases, the very words of the statute have not been adopted by the justices, and therefore that the objection to the validity of the order is well founded. When a party is called on to exercise a certain power under an act of parliament, the order calling on him to do so ought to state how he is to exercise that power, so as not to leave the matter in the least doubt. This order ought to have contained the words used in the statute, and the jury should have been asked the question whether this exceptive description did in fact apply to these trees. The rule must therefore be made absolute.

Mr. Justice Paterson.—It appeared to me for some time, that this order might be treated as a matter of form, but the argument that the trees may be cut, pruned or plashed, in such a manner as not to produce the effect required by the statute, is one which cannot be got over. To say that the trees are to be cut, is not saying that they shall be cut so as to produce such an effect as the statute requires in such a case, namely, to admit the sun and air to the highway.

Mr. Justice Williams.—I am of the same opinion. I think that the pruning must be required in the order to be such as shall have the effect contemplated by the statute when it gave the power to justices to order the act to be done.

Mr. Justice Coleridge.—I am entirely of the same opinion. There is some apparent hardship in this case, but that must happen in many cases where inferior officers are directed to act under the authority of a warrant or order, where there is an omission of the obvious and important words of a statute. It was so with the constable, until the legislature interposed for his protection. *Prima facie*, the surveyors here have committed a trespass. Then they must justify themselves. They cannot do that if the order under which they have acted is substantially defective. I think the order is so in this case. The magistrates have no right by the terms of the act to give a general order to cut the trees, but only *sub modo*; they have done so in this case, and the order, therefore, cannot be justified.

Rule absolute.—*Brook v. Jenny and another*, M. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

AWARD.—ATTACHMENT.—RULE FOR PAYMENT OF MONEY.—1 & 2 VICT. c. 110.

If an award has been made directing the payment of money, and an attachment is not moved for on account of nonpayment of it, and it is sought to enforce the payment pursuant to 1 & 2 Vict. c. 110, the proper course is to move for a rule requiring the unsuccessful party to pay the money, and the service of that rule should be personal, unless special circumstances can be shown to prove that such a service cannot be effected.

In this case, an award had been made pursuant to a judge's order, by which the defendant had been directed to pay a sum of money. It was proposed, for the purpose of enforcing payment of that sum, not to move for an attachment, but to apply under the 1 & 2 Vict. c. 110, which made a rule for payment of money capable of being enforced in the same manner as a judgment. It had been decided in two cases that the rule of Court, under which it might be said a sum of money was ordered to be paid by an award, was not a rule within the meaning of the statute. It was therefore held that in order to render the award available, the proper course was to apply for a rule calling on the unsuccessful party to pay the sum mentioned in the award.

H. Hill now applied for such a rule. The question was whether the service of the rule ought to be personal, or merely at the premises of the party against whom the application was made.

Paterson, J., was of opinion that as the rule thus introduced being in lieu of the old practice of attachments, wherein personal service was required, the defendant ought to be served personally with the rule if possible; but that if the rule could not be so served, an application might be made to render a special service of it sufficient.

Griggs v. Berwick, M. T. 1841. Q. B. P. C.

QUASHING INDICTMENT.—RULE NISI.—PROSECUTION.

If an application is made on behalf of the prosecution to quash an indictment on account of the Court finding it not having jurisdiction, is absolute in the first instance.

In this case, an indictment for a misdemeanour had been preferred against the defendant at the Central Criminal Court. It being discovered that the recognizances required by the statute constituting the Court, a fresh indictment for the same offence was preferred. The two indictments were then removed on the part of the defendant by *certiorari*.

Gurney now applied to quash the former indictment. He applied on behalf of the prosecution; the defendant had neither appeared nor pleaded. The rule ought consequently to be absolute in the first instance, as no cause could be shewn on the part of the defendant;

and he could not be damnified by this application.

Patteson, J.—I think the rule may be absolute in the first instance.

Rule absolute accordingly.—*R. v. —*, M. T. 1841. Q. B. P. C.

ARREST OF JUDGMENT.—ALLOWANCE OF WRIT OF ERROR.—JURISDICTION.

If a writ of error is tendered to the officer of the Court, for allowance, he has no discretion as to allowing it or not, but is bound to allow it, as the writ of error is a matter of common right, issued out of Chancery, and the Court cannot set aside the allowance.

In this case, a verdict was found in favour of the plaintiff, and a motion was afterwards made in arrest of judgment. This application succeeded. The plaintiff then brought a writ of error, and having tendered it to the proper officer, it was duly allowed.

Butt, now moved for a rule to shew cause why this allowance of the writ of error should not be set aside, on the ground that as there was no judgment of the Court, there could be no writ of error to it brought. It might be a question, whether the Court had power to grant such an application as the present, since the writ of error was a matter of common right, and issued out of the Court of Chancery. It might perhaps be said, that the Court of Error was the proper tribunal to which the application should be made, as it would have to judge whether there was a ground for bringing a writ of error.

Patteson, J.—I think the proper place for this application to be made, is the Court of Error. This Court has no power to refuse the allowance to a writ of error which comes from the Court of Chancery. The party has a right to issue the writ of error; and this Court cannot interfere with the exercise of that Court.

Rule refused.—*Boreman v. Brown*, M. T. 1841. Q. B. P. C.

RULE TO COMPUTE.—SERVICE OF RULE.

A service of a rule to compute was effected on a person at the house of the defendant, it not being shewn what was the communication between that person with the defendant: Held, that it was not sufficient.

Ball moved to make a rule to compute absolute, on an affidavit of service. The affidavit stated a service of the rule *nisi*, on a Mrs. Coleman, at the house of the defendant, but it did not proceed to state what privacy existed between the defendant and the person on whom the service was effected. The service perhaps was not sufficient. The plaintiff might enlarge the rule for a week, in order to effect another service more complete.

Patteson, J.—The service certainly is not sufficient, as at present sworn to. You may enlarge the rule as you suggest, and see if you can effect a better service.

Rule accordingly.—*Phillips v. Jefcot*, M. T., 1841. Q. B. P. C.

Common Pleas.

QUASHING RETURN TO WRIT OF CAPIAS UTLAGATUM.

Where the return to a special writ of Capias Utlagatum was insufficient, the Court, upon the application of the judgment creditor and the sheriff, directed it to be quashed.

Mr. Serjt. Manning moved to quash the return to a special writ of *capias utlagatum*, on the ground of its insufficiency. The application was made on behalf of the sheriff and the judgment creditor; and the insufficiency of the return consisted in the omission of the names of various tenants, in whose possession it was found by the inquisition certain lands of the judgment debtor were.

Per Curiam.—Take a rule.

Rule absolute.—*Engler v. Annesley*, M. T. 1841. C. P.

DISTRINGAS.—SERVICE OF WRIT OF SUMMONS AT DEFENDANT'S WAREHOUSE.

Where attempts had been made to serve the defendant with a writ of summons at his "warehouse," which were unsuccessful, and the servant of the defendant upon being asked where the defendant's residence was, said it was at Peckham, but refused to give any further information, the Court granted a distringas, although no further efforts to discover the residence of the defendant were sworn to.

Mr. Serjt. Shee moved for a distringas. The affidavit disclosed various attempts to find the defendant at his "warehouse" in London, in the course of which the deponent informed a servant of the defendant of his object; the latter pointed out various hours at which the defendant would be likely to be at his warehouse, and the deponent called twice in pursuance of appointment, but without securing his object. The servant, on being asked where his master's residence was, said it was at Peckham, but refused to give any further information. No attempts to find the residence of the defendant were shewn to have been made.

Per Curiam.—Rule granted.—*Elburne v. Marshall*, M. T. 1841. C. P.

DELIVERING PAPER BOOKS.—ARGUMENT ON WRIT OF FALSE JUDGMENT.

Where, on an argument on a writ of false judgment being called on in the special paper, it appeared that the defendant in error had delivered the paper books on the plaintiff's default, and the plaintiff refused to pay any share of the cost of those books, the Court compelled the payment of the costs before the argument; although writs of false judgment are not by description included within the terms of the rule of H. T. 4 W. 4, s. 7.

Talfourd, Serjt., for the defendant in error, moved for judgment. The plaintiff had neglected to deliver paper books, and the defen-

dant had therefore delivered them on his default, under the provisions of the R. G., H. T. 4 W. 4, s. 7; 2 Dowl. P. C. 304; Jerv. Rules, p. 105. This was a writ of false judgment, which was not one of the cases specifically alluded to in the rule of Court, but the case of *Best v. Prior*, 2 Dowl. P. C. 189, was in point. There the plaintiff in error having omitted to deliver paper books, and the defendant having delivered them, the latter was held to be entitled to judgment.

Stephen, Serjt., for the plaintiff in error. This case did not fall within the terms of the rule of Court. He cited *Fulham v. Bagshawe*, 1 B. and P. 292.

Tindal, C. J.—The new rules have not interfered with the already existing practice in cases of this kind, but here is a case cited to us, which is in favour of the defendant, and which has good sense on its side. The only question is, whether there is really any difference between the cases of a writ of error, and a writ of false judgment. The writ of error being on the judgment of a Court of record, and the writ of false judgment being on the judgment of a Court not of record. I think that there is no substantial difference.

Stephen, Serjt.—Then the plaintiff may now pay for the books.

Per Curiam.—Let the money be paid instant, and the plaintiff may be heard.

Dempster v. Purnell, M. T. 1841. C. P.

Court of Exchequer.

BANKRUPTCY.—EXECUTION.

The statute 2 & 3 Vict. c. 29, has not the effect of rendering valid a fi. fa. issued on a judgment signed on a warrant of attorney: such execution having been executed by seizure after a secret act of bankruptcy, but not completed by sale of the effects before the issuing of the fiat.

This case was argued, and in the present term

Parke, Baron, delivered judgment.—The question raised by the pleadings in this case is one of considerable importance; it is this—Whether the late statute of 2 & 3 Vict. c. 29, in cases of fiats subsequently to it, has the effect of rendering valid the execution of a fi. fa. on a judgment on a warrant of attorney, so as to entitle the plaintiff to the benefit of it against the assignees, such execution having been executed by seizure after a secret act of bankruptcy, but not completed by sale of the effects seized before the issuing of the fiat, and the warrant of attorney not being given by way of fraudulent preference. The question depends on the true construction of the act. According to the ordinary meaning of the language used in the enactment, it is clear that all executions, whether on judgments on warrants of attorney and confessions or not, are rendered valid to some extent, if *bond fide* executed or levied; and seizure would be a

sufficient execution before the date of the fiat, provided the plaintiff has no notice of a prior act of bankruptcy; and it seems also clear that these executions are not made valid for every purpose, so as to entitle the respective plaintiffs at all events to the benefit of them, but only so far as they would be defeated by an act of bankruptcy prior to the execution, that is the seizure; for all that is done is to make them valid, notwithstanding a prior act of bankruptcy. They are, therefore, placed in the same situation as if no such prior act of bankruptcy had occurred; and in cases of executions otherwise than on a warrant of attorney or cognovit without adverse suit, the effect of this enactment would be to entitle the plaintiff to the fruits of them, for he could be deprived of them only by reason of such act of bankruptcy. But an execution on such warrant of attorney, or cognovit, stands on a different footing, and would have been defeated not only by a prior act of bankruptcy, but by one intervening between seizure and sale, by virtue of 6 Geo. 4, c. 16, s. 108; the construction put on that section by several cases having been, that if the plaintiff was a creditor of the bankrupt at the time of the act of bankruptcy, he had no priority, as he was such creditor of the bankrupt until, by the actual sale of the goods, the sheriff became liable to him for the proceeds of the sale. The established distinction by the recent act between execution on a verdict and on a judgment on warrant of attorney, or by confession, was that the plaintiff acquired title against the assignees by seizure only in the former cases; in the latter, by seizure and sale before the act of bankruptcy. So far, then, as the execution on a warrant of attorney would have been invalidated by an act of bankruptcy before seizure, the statute affords a protection; but as the fiat itself issued in this case before the sale, the execution thereby absolutely became inoperative, and for that the statute appears to have provided no remedy. The effect of this provision seems to be, in cases of *bond fide* contracts, dealings, and executions, to do away with the relation to the act of bankruptcy, and to substitute the issuing of the fiat for the act of bankruptcy, as the time at which the right of the assignees is to accrue. This seems to us to be the fair construction of the words of this enactment; and it is some confirmation of this view of the case, that there is not only no express repeal of the latter part of the 108th section of 6 Geo. 4, but no recital of it as a provision that is to be qualified or altered by the act. The concluding proviso, "Nothing in the act shall be deemed or taken to give validity to any payment made by any bankrupt, being a fraudulent preference of any creditor or creditors of such bankrupt, or to any execution founded on a judgment on a warrant of attorney or cognovit given by any bankrupt, by way of such fraudulent preference," does not warrant the inference that the legislature meant to render valid all executions on such instruments, which were not given by way of fraudulent preference; that enactment (introduced, perhaps, from super-

* See 18 L. O. 229.

abundant and unnecessary caution) would have an operation by depriving of the benefit of the act all executions on warrants of attorney or cognovits fraudulently given, even although the execution may have been completed by sale as well as seizure before the date of the fiat. We are of opinion, therefore, although we have entertained considerable doubt on the question, that the execution in this case was defeated by the fiat. There is another point of view in which the subject may be considered, but which leads to the same result. It may be that the term "executed or levied," in the statute of Victoria, may be taken, in conjunction with the 6 Geo. 4, c. 16, s. 108, to have a different meaning, as applied to one description of executions and another; it may mean with respect to executions on judgments after verdict, executions by *seizure only*; with regard to those on judgments on warrants of attorney, execution by *seizure and selling*; if this be the construction of the clause in question, the assignees are still entitled, for the execution was not executed by seizure and sale before the issuing of the fiat. We are of opinion, therefore, that the assignees are entitled, and our judgment must be for the plaintiffs.

Whitmore v. Robertson, 12th Nov., 1841. Exch.

[*Reed and Shaw*, plaintiffs' attorneys.
Bell, Broderick, and Bell, defendant's attorneys.]

CHANCERY SITTINGS.

AT LINCOLN'S INN.

After Michaelmas Term, 1841.

Lord Chancellor.

Appeal Motions and Appeals,
Dec. 2, 9, 16, 21.

Appeals and Causes,
Dec. 3, 4, 6, 7, 8, 10, 11, 13, 14, 15,
17, 18, 20.

Petitions—Dec. 22.

Vice Chancellor of England.

Motions—Dec. 2, 9, 16, 21.

Unopposed Petitions, Short Causes, and Ad-
journd Petitions—Dec. 3, 10, 17.

Pleas, Demurrers, Exceptions, Causes, and
Further Directions,

Dec. 4, 6, 7, 8, 11, 13, 14, 15, 18, 20.
Petitions—Dec. 22.

Vice Chancellor Knight Bruce.

Dec. 2 Motions and Causes.

9, 16, Motions, Pleas, &c.

21, Motions and General Paper.

Pleas, Demurrers, Exceptions, Causes, and
Further Directions,

Dec. 3, 6, 7, 8, 10, 13, 14, 15, 17, 20.
Unopposed Petitions, Short Causes, and General
Paper—Dec. 4, 11, 18.

Petitions—Dec. 22.

Vice Chancellor Wilgram.

Motions and Causes—Dec. 2

Motions and General Paper—Dec. 9, 16.

Motions—Dec. 21.

Pleas, Demurrers, Exceptions, Causes, and
Further Directions,

Dec. 3, 4, 6, 7, 10, 11, 13, 14, 17, 18, 20

Unopposed Petitions, Short Causes, and General
Paper—Dec. 8, 15, 22.

THE EDITOR'S LETTER BOX.

The further letters on the Certificate Duty and the Law of Attorney's Bill shall be considered at the first opportunity.

Our arrangements will not permit us to have the benefit of the proposed aid of J. F. B.

The letters of H. L.; T. R.; R. W. S.; R. W. J.; "Sub. Art.;" and "Civis" shall be attended to.

We are obliged to "A Correspondent" for his observations on the cases he refers us. We shall see to them.

By the remarks of P. on the late Examination Questions, it would seem that he supposes *all* the Questions must be answered. A few difficult Questions can form no objection to the method adopted. On the whole, the Questions are sufficiently easy.

We were aware at the time, of the case at the Rolls, between a Country Attorney and his London Agent. It does not appear that any decision was made affecting the Law of Attorneys.

W. C. S. is informed that Articles expiring on the 6th December will not enable a clerk to go up for examination in the Michaelmas Term preceding, without a special rule of Court.

A. B. C., whose articles will not expire till the 21st day of June next, cannot pass his Examination in Trinity Term without the leave of the Court; and he cannot be admitted till Michaelmas Term, because he must be sworn in open Court.

We are informed that the Clerks of Magistrates in London differ in opinion from those in the country, as to the necessity of a 2s. 6d. stamp, on declaration made before Magistrates in lieu of affidavits. See the 4 & 5 Vict. c. 34, printed 22 L. O. 197.

The Questions since Trinity Term, 1839, as well as before, were printed in the Legal Observer immediately after each Examination, and the numbers may be obtained of the publisher.

The instances in which the Court has permitted persons to be *examined* who are not of age are very few, and under special circumstances. The Judges sitting at chambers are in the habit of making orders on many points relating to the Examination, but we think Z. should apply to the Court. He cannot be *admitted* till he is of age.

A Student at Ashbourne should peruse the work either of Mr. Daniel or Mr. Sidney Smith.

The Legal Observer.

SATURDAY, DECEMBER 11, 1841.

—“ Quod magis ad NOS
Pertinet, et nescire malum est, agitamus.

HORAT.

THE PRINCE OF WALES.

THE present position of the royal family is new in the history of this country. Queens have reigned before, but they have never been mothers. Princes of Wales have been born and flourished heretofore, but not while their mothers reigned as Queens Regnant. The imperious Elizabeth would admit no partner to her power, or permit herself to feel one particle of that sense of inferiority which the wife must, at times, render to the husband. Mary was married, but although she deluded herself with teeming fancies, was never blessed with children, who might, perhaps, have softened her gloomy disposition. She had but

“ A barren sceptre in her gripe,
Thence to be wrench'd by an unlineal hand,
No son of her's succeeding.”

Anne also was married, but she also died childless. We have had one King, the child of a Queen Regnant, James the First, but he was taken early, in his infancy, from his unfortunate mother, and forms no parallel case to the present one. Time will show how far the novel position in which the new-born Prince will be placed, will alter the historical relation which the Crown and the Prince of Wales have hitherto borne to each other. The heir apparent by the practice, if not the policy of the constitution, has hitherto been the rallying point for the opposition; and we shall hereafter see whether a mother's fondness will be more powerful than a father's command.

The Prince of Wales has always been peculiarly regarded by the law. He is usually made, as in the present case, Prince of Wales and Earl of Chester, by

special creation and investiture; but, as the Queen's eldest son, he is by inheritance Duke of Cornwall without any new creation.*

Some question has been raised as to the precedence of the Prince of Wales, so far as Prince Albert is concerned; but this question has been already settled by the royal warrant of the 5th of March, 1840, which ordains that Prince Albert shall upon all occasions and in all meetings, except when otherwise provided by act of parliament, have and enjoy place and precedence next to her Majesty. This leaves the question unsettled as to the precedence of the Prince Albert in the House of Lords and in the Privy Council, but it will give his Royal Highness rank to the Queen every where else; at ceremonials of every description; at royal christenings, marriages, and funerals; at banquets, processions, and courtly festivals; at installations and investitures; at all religious, civil, and military celebrations; and upon all other occasions formal or social, public or private, during the life of her Majesty. On all such occasions, therefore, Prince Albert will rank before both heirs apparent and heirs presumptive to the throne.^b

The Gazette of the 7th instant contains an order of her Majesty that Letters Patent should pass the Great Seal for creating his Royal Highness the Prince of the United Kingdom of Great Britain and Ireland (Duke of Saxony, Duke of Cornwall and Rothsay, Earl of Carrick, Baron of Renfrew, Lord of the Isles, and Great Steward of Scotland), Prince of Wales, and Earl of Chester.

* 8 Rep. 1; Seld. Tit. Hon. 2, 5; *Lomas v. Holmden*, 1 Ves. sen. 294.

^b See the question of Prince Albert's precedence considered, 19 L. O. 273, 370.

EXPEDIENCY OF A DISTINCT BAR FOR EACH COURT.

WE adverted in our last Number^a to the necessity of a separate Bar in each Court. The exclusive nature of the Common Pleas Bar, (though occasioning difficulty in cases arising from the Circuits,) and the recent arrangements in the Courts of Chancery are calculated to promote the object.

Some hesitation, however, may be expected amongst Counsel in choosing their respective Courts, and they may not all be able to come to an immediate determination. For instance, in the list which we gave at the commencement of last Term of the Equity Counsel, a few alterations, which we subsequently noticed, took place.^b To these alterations, however, there should be some such limit as adopted on the Circuits. A Barrister who selects his Circuit may change to another, but he can do this *once* only. So the Metropolitan Leaders should be at liberty to correct a mistaken choice, but within due limits; and we have no doubt these limits will be properly settled by the Members of the Bar themselves.

There may be difficulties amongst the Leaders of the Common Law Bar in following the examples we have mentioned; but we trust an attempt will be made by the next Term to apportion the business of the Queen's Bench and the Exchequer. It is clear that the general business of the Court must not be impeded because a few favourite Counsel hold briefs in several Courts at the same time. An Attorney in a difficult or important case is, of course, desirous of securing the most eminent Counsel, so long as the present practice continues, and will take his chance of their being present.

We have received some suggestions, which we shall notice hereafter, on this subject.

DISTRIBUTION OF JUDICIAL BUSINESS IN THE EQUITY COURTS.

AT the sitting of the Court, on Wednesday the 8th December, the Lord Chancellor said, "it may be useful to the Bar to be informed that I have transferred to Vice Chancellor Knight Bruce some of the causes that were set down before the Vice Chancellor of England. They were those set

down in Hilary Term, and this transfer would be subject to arrangement hereafter regarding any particular cause."

The order has been since placed up in the Registrar's Office, and by referring to the Cause List, at p. 110, *post*, the effect of this alteration will be seen. The following is a copy of the order:—

The Lord Chancellor has directed that the causes set down in the book of causes, to be heard before the Vice Chancellor of England, from "*Clifford v. Turrell to Hall v. Rawdon*," both inclusive, and which were set down in Hilary Term last, be transferred from such book to that of the Vice Chancellor Knight Bruce, and that they be heard immediately after those already set down before the Vice Chancellor Knight Bruce.

E. D. C.

8th December, 1841.

LAW OF JOINT-STOCK COMPANIES.

TRANSFER OF SHARES.

WE have already collected the principal cases relative to the transfer of shares, in our twentieth volume, p. 1, *et seq.* We then shewed that in the transfer, the regulations of the company must be strictly complied with, in order to divest the holder of all responsibility: any other mode of transfer will not constitute an equitable mortgage. *Es parte Lancaster Canal Company*, 1 Dea. & Ch. 411. Where the act or deed of settlement, by which the company is established, provides that the transfer of shares shall be in writing, duly stamped, under the hands and seals of both parties, and the clause afterwards calls the instrument a "deed or conveyance," and "a deed of sale or transfer," such transfer must, in order to satisfy the Statute of Frauds, be by deed; and an instrument of transfer of shares, executed by the proprietor of such shares with the name of the purchaser in blank, and handed over by him to the plaintiff, by whom, on the sale of such shares to the defendant, the defendant's name was inserted as the purchaser, is void. A deed with the name of the vendee in blank at the time of sealing and delivery is void. *Hibblewhite v. M'Morine*, 6 M. & W. 200.

In a more recent case, the circumstances were these. The plaintiff in the month of February, 1838, entered into a contract with the defendant, through their respective brokers, for the sale of thirty shares in the Bristol and Exeter Railway, at 7l. 5s. per share, and the usual contract notes passed between the parties, no time being mentioned for the completion of the purchase. On the 3d of March, the defendant wrote to the plaintiff's brokers requesting them "to despatch the thirty Bristol and Exeter shares forthwith," and they replied the same day, "we herewith send you transfer of thirty Bristol and Exeter shares in blank."

^a See p. 88, *ante*.

^b We understand that Mr. Wakefield practises before Vice Chancellor Wigram as well as the Vice Chancellor of England.

This was accordingly done, and the purchase money was paid. Calls were subsequently made on these shares, and they not being registered in the name of the defendant, and the plaintiff remaining the apparent owner of them, he was compelled to pay the calls. In an action against the defendant for not indemnifying the plaintiff for the payments and liabilities in respect of the calls; it was held, that under the above circumstances, there was no undertaking implied by law to indemnify against all subsequent calls, nor any evidence of such an undertaking in point of fact. We extract a portion of the judgment of Mr. Baron Parke as to this. "We are of opinion that under the circumstances of the case, there was no undertaking implied by law, to indemnify against all subsequent calls, nor any evidence of such an undertaking in point of fact. On the 20th of February, 1838, the contract was entered into, which was simply an agreement by the plaintiff to sell, and the defendant to buy thirty shares, at the price of 7l. 6s. per share, no time being specified for the completion of the purchase: nor was there any such stipulation in the contract as the conveyance itself would have contained if completed, that is, that the vendee should be subject from the date of it, or any future time, to the conditions upon which the vendor held them. If the case had rested upon this contract, the situation of the parties would have been this: The plaintiff, after shewing a good title to the defendant, would have had a right to call upon him to complete his purchase in a reasonable time, by preparing a deed in the statutory form; and if the defendant had done so, the plaintiff might then have executed it, and required the defendant to do the same, and to deliver, or attend with him to deliver, the deed to the company, that a memorial might be entered into and indorsed on the deed of transfer pursuant to the 169th section. If all this had been done, the plaintiff would have been no longer liable to any call; if the defendant had refused to perform his part, he would have subjected himself to an action for the non-performance of that which he omitted to do; and if in consequence of the defendant's breach of his contract, the plaintiff had been obliged to pay future calls, he might have recovered this amount, by way of special damage for the defendant's breach of contract. But in this case the plaintiff did not pursue the course which, according to law, he ought to have done. The defendant appears to have been satisfied with the title, and both the plaintiff and he to have been content, the one to deliver, and the other to accept, a transfer with the name of the vendee in blank; for the purpose, no doubt, of the defendant selling and transferring those shares to another, and filling in the name of some subsequent purchaser from himself; or more probably of handing over the instrument to some purchaser from himself, or receiving the price; for the shares were clearly bought on speculation. On this occasion, when this, probably the customary course, was adopted instead of that which the

law, in the absence of custom, prescribes, the plaintiff might have insisted that he would not deliver such a blank conveyance as was asked, which might postpone indefinitely the actual conveyance to a vendee, unless the defendant would indemnify him against all intermediate calls; and if that had been done, the plaintiff would have been safe; but this he omitted, and there is no trace of any evidence of such a contract having been made or contemplated. The truth probably is, that the plaintiff did not think of this future liability at all, or if he did, he thought that the shares would be sold, after a new call, to a purchaser who would take the amount into consideration in fixing the price, and pay the calls to the company, in order to get the transfer completed. We cannot, therefore, think that the plaintiff and defendant ever contemplated such an undertaking as the declaration in this case subscribes; and that the evidence does not warrant the jury in drawing an inference of any such engagement. Does the law raise any such contract? We think it does not. The plaintiff by his neglect to get the conveyance completed, and the transfer entered, becomes a trustee for the defendant and his assigns, and receives the profit, and must pay the outgoings; but there is no authority for saying that the law makes any promise by a *cestui que trust*, to a trustee simply to repay all that the trustee may pay on his own account, still less on that of the subsequent *cestui que trust*." Rule absolute. *Humble v. Langston*, 7 M. & W. 517.

JOINT STOCK BANKS.

Where, by act of parliament, a joint-stock company may be sued through the medium of their public officer, he is the proper person to be sued, and not the directors, even where the directors are charged with a gross fraud; at all events, that one only of such directors ought not to be made a party. *Pendlebury v. Walker*, 4 Yo. & Col. 424.

COMPENSATION.

A *mandamus* to a railway company, commanding them to summon a jury to assess compensation to a claimant, will not be granted, where it appears that the works calculated to damnify the claimant are still *bond fide* proceeding, although the applicant also claims for land taken by the company, and considerable delay has taken place since the commencement of the works. Mr. Justice Coleridge said, "The demand here made is for compensation in respect of the land which is taken, and the damage done to that which is left. It is put to me to say, whether this conduct on the part of the company does not amount to a virtual refusal to give compensation. I confess that, from the experience I have had of these applications, I have no doubt, that if this rule was granted, it would be discharged. An application has been made to the company to summon a jury to assess the value of the land taken, and the amount of the injury done by the

works of the company; and to that application a refusal has been returned. But the Court would never award a *mandamus* where the refusal has been *bond fide*, and the company were justified at the time in not granting the prayer of the application. It is very easy to say, that it is sometimes hard on claimants not to be able quickly to compel the company to give compensation. Extreme cases may be hard on one side and on the other; as it would be hard on the company that a landholder should be able to compel the company, whenever there is a cessation of the works, to summon a jury to assess the amount of damages to which the landholder is entitled. But the Court would see, whether the proceedings of the company were *bond fide*. Now, I find, that on the 17th Feb., there was a great deal more to do; and the company were still digging. Under such circumstances, I think the Court would say, that you ought to wait till the company has done all the damage they are likely to do, and then a jury would assess the compensation for the whole. I don't mean to say, that if a month or six weeks hence, it appears that this is done *mala fide*, that the rule would not be made absolute: but I think, that if I granted the rule now, on the present state of facts, it would be discharged. It cannot be supposed, that the company could be proceeding in this way by sinking their works, merely to put off the time of making compensation to Mr. Parkes. I think, therefore, that I ought not to grant this rule." Rule refused.—*Ex parte Purkes*, 9 Dowl. 614.

EQUITABLE MORTGAGE BY DEPOSIT OF DEEDS.

AN important case on this subject was heard by Lord Chancellor *Cottenham*, in Trinity Term, to which we lately adverted. Certain bankers were equitable mortgagees by the deposit of title deeds under a written agreement with the freeholder of certain estates. Two judgment creditors subsequently issued writs of *elegit*, and entered into possession of the property. The bill charged fraud and collusion between the freeholder and these judgment creditors, and sought to establish a priority on behalf of the equitable mortgagee. The Vice Chancellor had granted an order for an injunction and receiver in favour of the plaintiffs, and a motion by way of appeal, was made to the Lord Chancellor. By the bill, the claim of priority rested on the ground of fraud and collusion. These being denied, and an additional affidavit made, the order of the Vice Chancellor was set aside, and the Court held that there was no case made out to in-

terfere with the defendant's legal title; but the general question whether an *equitable mortgage by deposit of deeds* can be defeated by a subsequent execution of a judgment creditor, was not decided, although it appears that the Lord Chancellor somewhat inclined to the judgment creditor.

Mr. J. Wigram, Mr. G. Turner, and Mr. F. J. Hall, supported the appeal, and cited on behalf of the defendant, *Metcalf v. The Archbishop of York*, 1 Myl. & C. 547; S. C. 4 Law Jour. (N. S.) Chanc. 154; *Plumb v. Fluit*, 2 Anstr. 432.

Mr. G. Richards and Mr. R. Whitworth, supported the order, and cited on behalf of the plaintiffs:—*Ex parte Knott*, 11 Ves. 609; *Finch v. The Earl of Winchelsea*, 1 P. Wms. 277; *Meatner v. Gillespie*, 11 Ves. 621, 640; *Huguenin v. Baseley*, 14 Ves. 273; *Burgh v. Francis*, 3 Sco. 536 n.; *Averall v. Wade*, 1 L. & G. 252; *Bruce v. The Duchess of Marlborough*, 2 P. Wms. 491; *Mackreth v. Symmings*, 15 Ves. 329, 350; *Casberd v. Ward and Attorney General*, 6 Price, 411.

The following are the principal parts of the judgment bearing on the main question,

The Lord Chancellor.—The plaintiffs' case, as made by the bill and the affidavits, is simply this, that having had dealings with a person of the name of Cooke, and a debt having become due from him to them, he deposited certain title deeds under an agreement, constituting undoubtedly, as between themselves and Cooke, an equitable mortgage. They then say, that a fraudulent combination was formed between Cooke and the other persons, who are parties defendants to this bill, for the purpose of depriving them of the benefit of their equitable mortgage; and that, although there was no consideration, no debt due from Cooke to these other parties, they agreed there should be an action brought, and then judgment confessed, and an *elegit* issued, so as to put these defendants in possession of the premises, which were within the contract for the equitable mortgage, which the plaintiffs claim. The case is supported by the plaintiffs' affidavit, and by the affidavits of several other persons, who speak to detached parts of the case, for the purpose of supporting the title to the relief sought by the plaintiffs. The facts, so far as they are stated in the bill for the purpose of constituting a case of fraud, are denied by the defendants' affidavits. The question is, whether the defendants are participators in the fraud, so as to affect the security they have got. That they positively deny; and I do not think, upon the affidavits, much doubt remains, but that they were *bond fide* creditors of Cooke. Cooke may have intended to have given them a benefit, and to secure their debts in preference to others, and there may have been that degree of understanding of fraud between Cooke and themselves, as will invalidate their title. As against the plaintiffs, there may or may not be fraud, as the facts may turn

out; but these affidavits negative all such allegation of fraud, as far as concerns them. According to the representation made to me of the ground on which the Vice Chancellor put his order, he proceeded upon this, *viz.* that the defendants had not denied that they knew of the plaintiffs' equity. If they knew of the plaintiffs' equity, and took a legal interest, with a knowledge thereof, undoubtedly they could not hold that legal title to the prejudice of the equity. Now, the case comes on before me, and I think his Honor would not have made his order in absence of denial of that which was not clearly charged by the bill, and which, in fact, in the shape and form in which the plaintiffs brought on their case, did not constitute part of their case. I have now, however, an affidavit in order to supply what the Vice Chancellor thought necessary for the defendants' case. I have an affidavit made by the defendants, in which they positively deny (whether it is true or false I have no means of ascertaining, but I am bound to give credit to it, there being nothing against which it is to be balanced) any knowledge or notice of the plaintiffs' equity at the time when they obtained this legal right to hold possession by virtue of this *elegit*. According to the case made, therefore, the bill praying, not that the plaintiffs might be declared to be entitled in equity in preference to the *elegits*, but that the *elegits* may be declared fraudulent and void, as well as the proceedings which led to those *elegits*, I am bound to say, that, upon the evidence, as it now stands, there is no case made out to interfere with the defendants' legal title.

At the bar, however, in the argument, a totally different turn was given, or attempted to be given, to the plaintiffs' case. It was attempted to be said, that at law, *independently of the question of fraud*, the plaintiffs had a preferable title to the defendants. Now if that be so, it is quite immaterial to the plaintiffs, whether the *elegits* were fraudulent or not. In short, it would be a hopeless piece of fraud to manufacture that, which, when manufactured, would have no effect against the plaintiffs' equity. It is clear, therefore, that was not the ground on which the bill was filed, and yet the bill prays that this judgment and *elegit* may be set aside as fraudulent and void as against the plaintiffs, with which the plaintiffs had nothing whatever to do, if they stood in the situation in which they had a preferable equity—an equity which would give them a preferable title as against the title now claimed by the defendants. It is quite sufficient for the present purpose to say, that is not the case made by the plaintiffs; it is not made in argument before the Vice Chancellor, and is only suggested when it comes to be argued before me. I therefore abstain from going further into the matter than to say, that if the bill had been framed for that purpose, and the claim of the plaintiffs founded on that supposed equity, I should have required a great deal more to have satisfied me of the validity of that equity, before I could interpose by interlocutory order;

because I find these defendant in possession of a legal title, although not, to all intents and purposes, an estate, yet a right and interest in the land, which under the authority of an act of parliament, they had a right to hold, the *elegit* being the creature of an act of parliament, and therefore they have a parliamentary title to hold the lands against all persons, unless a case of equity should be made to induce this Court to interfere.

I was a good deal struck, at the time it was quoted, with that case decided in the Exchequer—decided by a high authority, and evidently after very considerable pains taken to ascertain the state of the law on that subject (I mean the case of *Casberd v. Ward and the Attorney General*, 6 Price, 411, decided by *Richards, C.B.*, in the Exchequer); and I was very much relieved when I read that case, because I observe the Chief Baron puts it entirely upon this, *viz.* that it was a contest between the two equities; there was no debt of record due to the Crown, but only a mere equitable debt due to the Crown, and therefore it was no contest between a legal title and an equitable claim, but between two equities; and therefore as between two equities the prior equity was of course to be preferred. I am glad to find that, because I should have found great difficulty if the transaction had been otherwise, to have understood on what ground the Court proceeded; but, assuming the Court to have been right in that view of the nature of the debt due to the Crown, it does not, in the least, operate on the question now before the Court.

However, I do not enter further into that than to explain what I find to be the result of the case of *Casberd v. Ward and the Attorney General*. It is quite sufficient for the present purpose, that the plaintiffs have failed in making out the case on which they ask for the interposition of the Court; and I am therefore of opinion, the Vice Chancellor's order must be discharged. *Whitworth v. Gaugain*, 19 Law Journal, 317.

EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS AT THE LON- DON UNIVERSITY.

Monday, November 8, 1841.

Examiner, Mr. GRAVES.

BLACKSTONE'S COMMENTARIES.

Morning Examination.

I.—Give a general statement of the arrangement adopted by Blackstone in his Commentaries.

II.—1. Enumerate the various parts of the unwritten law. 2. State the legal requisites of a particular custom, and, 3. explain, by example, how a custom may be vitiated by an interruption of the right, as distinguished from an interruption of the possession.

III.—1. What are the component parts of the Canon Law of Rome? 2. To what species of canons does the Statute 25 Hen. 8, c. 19, relate? 3. Of what force are the canons of

1603? 4. Explain the constitution of ecclesiastical convocations in England.

IV.—1. Give an historical account of the law as to the duration of parliament. 2. In what case is a dissolved parliament revived? 3. How soon after the determination of a former parliament must a new one be summoned? 4. Give instances of parliaments which have sat without summons from the Crown. 5. What practical checks exist to prevent the continued administration of government without the assembling of parliament?

V.—1. Explain the doctrines of the constitution with respect to royal succession. 2. State the leading provisions of the Bill of Rights and of the Act of Settlement.

VI.—1. Explain the prerogative of the Crown as to lunatics and idiots; 2. as to treasure-trove, distinguishing the case when things found belong to the finder; 3. as to the right of making certain kinds of erections on the lands of subjects. 4. Mention the remedies of a subject in case of invasions of his rights by the Crown.

VII.—1. Explain the law of allegiance. 2. State the disqualifications of aliens. 3. Distinguish between denizens and naturalized persons.

VIII.—1. Define the extent of the husband's liability for the acts of his wife during the coverture, and 2. explain the principles upon which his liability is founded in the several cases specified.

IX.—1. How are corporations created? 2. Enumerate the powers which, according to Blackstone, are incident to all corporations aggregate. 3. Distinguish the several kinds of corporations, and, 4. state the principles which determine the person in whom the right of visitation resides.

X.—1. Distinguish between things real and things personal. 2. Explain the words, land, tenement, hereditament. 3. Distinguish between corporeal and incorporeal hereditaments.

XI.—1. Distinguish between common appendant and common appurtenant; 2. between rent-service, rent-charge, and rent-seck.

XII.—1. Explain the words *boc-land*; *folc-land*; 2. the origin of copyhold tenure; 3. the origin of manors.

XIII.—Explain the principal legal distinctions between conveyances operating at common law and conveyances operating under the Statute of Uses.

XIV.—1. Distinguish between remainder and reversion; 2. between vested and contingent remainder; 3. between remainder and executory devise.

Afternoon Examination.

I.—1. Enumerate the modes of redressing private wrongs by acts of the parties. 2. In what case is entry on the land of a third person for the purpose of recaption lawful? 3. What things are privileged from distress?

II.—Explain the doctrine of remitter.

III.—1. Distinguish Courts of Record from Courts not of Record. 2. In what cases have the Courts of King's Bench, of Common Pleas,

and of Exchequer respectively, exclusive jurisdiction? 3. Explain the nature of (a) *mandamus*; (b) prohibition; (c) *quo warranto*.

IV.—Explain the different effects of proceeding in cases of libel (a) by action; (b) by indictment; (c) by criminal information.

V.—1. Relate the history of the Habeas Corpus Act. 2. What alteration was made, by analogy to that act, in the practice of returns to the writ of Habeas Corpus *ad subjiciendum* at Common Law?

VI.—When is the action of trespass applicable, and when a special action on the case?

VII.—Explain the fictions of the ordinary action of ejectment.

VIII.—1. What is a departure in pleading, and what is duplicity? 2. When is a new assignment expedient, and when may matter be pleaded *puis darrein continuance*?

IX.—Mention some of the advantages and defects of trial by jury in civil and criminal cases.

X.—Explain the principal differences between Courts of Common Law and Courts of Equity in modes of proof, modes of trial, and modes of relief.

XI.—What are the principal rules which limit the reception of evidence?

XII.—1. Explain nonsuit, special verdict, special case. 2. State the grounds for arrest of judgment; for repleader.

XIII.—What are the chief provisions relating to high treason of the statute 25 Edw. 3, c. 2? 2. Explain, by example, the judicial construction placed upon the words "compassing or imagining the death of the king;" "levying war against the king." 3. What are the peculiar rules of evidence in cases of high treason?

XIV.—Define conspiracy; affray; riot; rout; unlawful assembly.

[To be continued.]

NOTES ON SHARP PRACTICE.

Mr. Editor,

If, as an old stager, I can give any of your youthful readers (also practitioners) a useful hint, which may prevent their being wrecked upon the straits of sharp practice, it will always give me pleasure. The following just occur to me: One of the manoeuvres now rife for gaining time, creating delay, expence, and vexation, is changing the venue to the defendant's locality, perhaps two or three hundred miles off, throwing the matter over to the spring assizes, giving the defendant in the interim the benefit of the insolvent act, or bankrupt act, or any other of the numerous modes, by which, (by our reformed system of laws) a defendant is allowed to evade the payment of his debts.

To guard against this, the solicitor should ascertain, before declaring where the cause of action arose. If for goods; where they were delivered,—if at any wharf, canal, or booking office in *London* or *Middlesex*; let him lay his cause in which of these counties they were

delivered.—If the defendant in such a case, changes the venue, *the plaintiff's solicitor can then bring it back*, effect a countermarch, and will not get into disgrace with his client, in consequence of being over-reached by an ingenious opponent.

While these tricks of subtlety are (to the disgrace of our law) part of our code of practice, however the honourable practitioner's mind may revolt at the disagreeable task, he must enter into their details, and prepare himself for the odious conflict; that he may not be worsted by a cunning adversary.

The attempts now daily made at chambers to upset judgments are of the most desperate kind. In most cases, where a party is too late to plead, or a plea is forgotten, some notable fight is got up to upset the judgment. I lately employed a highly respectable solicitor in the country, to serve the various proceedings in a cause, who wrote me, with much precision and accuracy, advising me that he had served each of them *personally* on the defendant, nevertheless, the defendant's attorney's agents attempted to upset my judgment, on an affidavit of the defendant, that notice of declaration was not served on him till *two* days after the time. My respectable agent (an attorney of nearly twenty years standing) contradicted this by affidavit, and the learned judge dismissed the application with more *stung froid* than Judges Allen Park, or Bayley, the patriarchs of the old school, would have shewn at such a vile attempt. The defendant's attorneys in town were respectable men, but they were "only agents."

Young attorneys who can only make their way by diligence, attention to business, and ability to cope with this sort of practice, cannot now be too careful, too minute in all their proceedings,—actual acquaintance with practice is the desideratum, as all the study of all the theoretical essays on practice will not render them fit to cope with the gentry, whose jollities enliven the taverns in the neighbourhood of Chancery Lane, and whose chicaneries puzzle the learned of Serjeant's Inn. CIVIS.

MOOT POINTS.

WARRANTY OF A HORSE.

In the *Legal Observer* of the 9th Oct. p. 467, there is a case on the warranty of a horse, *Brown v. Elkington*, 8 Mee. & Wels. 132, in which Lord Abinger in summing up told the jury that a defect in the form of the hock which had not occasioned lameness at the time of the sale, although it might render the animal more liable to become lame at some future time, was no breach of the warranty. Now the case of *Margetson v. Wright*, 8 Bing. 454, appears to me to be at variance with the above case. In the case of *Margetson v. Wright*, the defendant warranted a horse sound wind and limb at the time of the contract. The horse at that time had a splint on his off fore leg, visible to the plaintiff, and from the effects of which he afterwards became lame. In an action on the warranty, the jury found that he had

upon him at the time of sale the seeds of unsoundness, and gave their verdict for the plaintiff, and held that the splint was an unsoundness to which the warranty extended. The warranty in this case was "Mr. Margetson agrees to buy Mr. Wright's horse 'Sampson,' and to pay him 40*l.* on the delivery of the horse, and the further sum of 60*l.* on May-day next, and also to give Mr. Wright 10*l.* a time for the first five times the horse shall win a race in 1830, and the said Mr. Wright doth hereby warrant the said horse to be sound wind and limb at *this time*." *Tindal, C. J.*, in delivering judgment, said (in the latter part of it) "on the former motion, our attention was not called to any evidence, if any such was given, as to the different nature and consequences of splints, which the learned judge reports to have been given upon the present occasion; but it now appears that some splints cause lameness, and others do not, and that the consequence of a splint cannot be apparent at the time, like the loss of an eye or any visible blemish or defect to the common observer. We therefore think, that by the terms of this written warranty, the parties meant this was not a splint at that time which would be the cause of future lameness, and that the jury have found that it was. We think the warranty was broken." The general rule I think seems to be, that when the defect is manifest, to which the attention of the party is directed at the time of the bargain, a general warranty of soundness will not be deemed to extend to it; but as some splints cause lameness, and others do not, a splint is not one of those patent defects against which a warranty is inoperative; and inasmuch as some curby hocks produce lameness, and others do not, I think they ought to be classed amongst those patent defects.

If the difference between these two cases is no discrepancy, I shall be extremely glad to be enlightened on the subject. H.

DEED EXECUTED WITHOUT DATE.

A deed of conveyance of premises by lease and release was prepared and signed by the necessary parties, *but the date was left blank*. It has, however, been registered; both vendor and purchaser are dead, both leaving wills. Is such a deed valid in its present state, so as to enable the devisee or heir at law of the purchaser to sell; and if not, what course must be adopted to perfect it?

A CONSTANT READER.

MERGER OF TERM.

With reference to the question of *A. M. C.*, on this head, in number 686 of the *Legal Observer*, I am equally unable with him to find a decision in point, but an opinion may perhaps be arrived at by a consideration of the principles on which this branch of the law is founded. The foundation of those principles is, that the particular estate and the reversion must meet in one and the same person, and come in one and the same right. What is the fact in the case in question?

The term of five hundred years is vested in Joseph D., whilst the reversion in fee is devised to Joseph D. and Augustus D. This, it is plain, is not a meeting or coincidence in one and the same person, and it is obvious that the rights attached to those estates are different. I am therefore of opinion, that the term of five hundred years is not merged but still subsisting, both at law and in equity; but even if this were held to be a merger at law, I still think it probable that it would be held otherwise in equity. I find it laid down, with reference to this very subject of merger, that "Courts of Equity look into the beneficial interests and views of the parties, and do not regard whether the estate is so strictly in the same person or in different persons." Equity, bearing in mind this principle, could not but see the manifest hardship which Joseph would suffer in being compelled to share with Augustus an estate which belonged solely to himself; and in addition, losing the amount for which that estate was a security, which would be the consequences of this being considered a case of merger; and it would therefore be governed in its decision by the intention of the testatrix, which intention it would, I think, judge to be this—viz. that the two brothers should have the estate in fee, subject to Joseph's mortgage, it being no part of her wishes that Joseph should be deprived of his mortgage money; and equity would in accordance with this view of the testatrix's intentions, decree perhaps to the effect that the mortgage should be paid off out of the whole estate, and that the latter should then belong, as devised, to Joseph and Augustus as tenants in common. This brings me to the question "whether Joseph is entitled to receive the whole or only half of the mortgage money." This depends on whether the devised estate is expressly burdened with payment of the mortgage, if it be, Joseph and Augustus as joint owners of it, will have to bear the charge in equal proportions; in other words, Joseph will be entitled to receive half the mortgage money from his brother; but if the estate be free from the charge, the devisees have a right to call upon the executors to discharge the incumbrance out of the general assets of the testatrix, and in that case Joseph will be entitled to the whole of the mortgage money.

J. R.

SELECTIONS FROM CORRESPONDENCE.

SEPARATE USE.

In the course of a somewhat extensive, but unassisted reading of those cases in *equity*, on the authority of which a married woman is enabled to have and enjoy a separate estate without regard to those rules of *law*, which would otherwise govern the rights of property as between husband and wife, I have recently come to Lord Cottenham's judgment in *Scarborough v. Borman and Tullett and Armstrong*, reported with such evident care and fidelity in the *Legal Observer*, vol. 19, p. 263; and my

attention was forcibly arrested by the following remarkable dictum, with which that eminent judge prefaces his decision on the points immediately before him, "*we know nothing of separate use except as anticipating future coverture.*" I presumed, perhaps too hastily, that his lordship meant that Courts of Equity, which to use his own strong expression, had in establishing a separate estate in favour of the wife, "*violated the laws of property as between husband and wife,*" would not extend their protection to a settlement or gift made by a third party to the separate use of a woman already under coverture, against the husband's consent, and in derogation of the common law, which invests him with whatever she acquires during marriage, and I began to search for cases where equity had treated a separate estate so created upon a different principle from that which it applies to gifts or settlements to the separate use of the wife, made either by the husband or by others, with or without his concurrence, direct or implied, *before marriage*. None such have I found, and probably have been misled by my imperfect understanding of the subject into an erroneous interpretation of the late Lord Chancellor's meaning; though it certainly does strike me, that to permit a third party to interpose between husband and wife, and by deed or will to create a separate estate for the latter, is to give to strangers a fearful power to affect the relation subsisting between them, and it may be, to tempt the woman thus rendered independent of her husband, to desert and set him at defiance. Be that, however, as it may, I feel it very difficult to reconcile the dictum in question with the doctrine to be found in most other modern cases, on the subject of separate use.

A STUDENT.

SUPERIOR COURTS.

Lord Chancellor's Court.

JOINT STOCK BANK.—BANKRUPT PARTNER.—
RIGHT TO PROVE.

A partner in a banking company formed, in pursuance of the act 7 Geo. 4, c. 46, kept an account with the bank as a customer, and having become bankrupt, the company was declared entitled to prove the balance of his account against his estate.

This was a petition of appeal and case from the Court of Review. It appeared that Robert Caldecott, who had been declared a bankrupt, had been a partner in "The Commercial Bank of England," and kept an account as a customer with that bank up to the time of his bankruptcy. The registered officer of the banking company applied to the commissioners to admit him to prove a large balance due from the bankrupt in his banking account as a customer. The account was unsettled, but the balance in favour of the bank was not denied. The commissioners refused to allow the proof, on the ground that the bankrupt was a partner in the bank. The public officer of the bank petitioned the Court of Review,

and that Court allowed the proof. The assignees now appealed against that decision.

Mr. *Swanston* and Mr. *Russell*, for the petitioners.

Mr. *Richards* and Mr. *Anderdon* for the commercial bank. The arguments applied to the construction of the acts 7 Geo. 4, c. 46, and 1 & 2 Vict. c. 96, and also to the general rule, that until the general partnership accounts should be taken, there was no legal debt. The cases referred to were *Ex parte Hall*, *Ex parte Law*, and *Ex parte Snape*, all reported in *Montague and Chitty*.

The Lord Chancellor was of opinion that the case fell within not only the spirit but the terms of the two acts referred to. It appeared to the legislature that if these large companies were to be fettered by the rules of law and equity applicable to parties in ordinary circumstances, it would be impossible for them to carry on their business, and therefore the legislature interfered by express enactments to permit the companies to deal with their partners as if they were strangers. This power, by the act of 7 G. 4, was extended to all proceedings at law and in equity, including proceedings in bankruptcy. The act of Victoria recognised the principle of the former act and extended its powers. He was satisfied that the decision of the Court of Review was right in allowing the proof, and he dismissed the appeal with costs.

In re Caldecott, a Bankrupt, at Westminster, M. T. 1841.

EXCEPTIONS. — PRACTICE IN THE MASTER'S OFFICE. — BOND DEBT. — CONSIDERATION.

It is not the practice in the Master's office, to require proof of a bond debt by affidavit, as of a simple contract debt. All that the Masters require is proof of the execution of the bond. But if the consideration is impeached, they ought to inquire into its legality.

This was a hearing of exceptions to the Master's report. The bill was filed for the administration of the estate of the late Sir William Rumball. Under the usual decree of reference to the Master to take the accounts, &c. two bond creditors of Sir W. Rumball claimed, one, for a principal of 8,000*l.*, with interest since 1826; the second, for a principal sum of 2,500*l.*, with like interest. The Master reported in favour of both claims, without requiring affidavits of the debt, or proof of the consideration for the bonds, though it was urged on him that they were given for gambling transactions in the public funds. Exceptions were accordingly taken to the report on these grounds.

Mr. *Tinney* and Mr. *Toller* for the exceptions.

Mr. *Turner* and Mr. *Wigram* for the bond holders.

Mr. *Stuart* and Mr. *Richards* for other parties.

See the 72d of the New General Orders.

The Lord Chancellor. — The exceptions were partly of form, partly of substance. As to the point of form, it was said that the Master

ought to have required an affidavit of debt before he allowed it. That was quite true as respected a simple contract debt. But these being bond debts, there was a dispute as to the practice of the Masters. The Masters were applied to, and there came a certificate from eight of them, agreeing that the proof of bond debts was only a proof of the execution of the bond, which ought to be *videtur voce*. With respect to the substance of the exceptions, his Lordship having stated at length the grounds of suspicion of the consideration of these bonds, ordered the report to be referred back to the Master to be reviewed, but not upon the exceptions.

Rumball v. Lord Rivers, Lincoln's Inn, December 6th, 1841.

Vice Chancellor of England's Court.

CONSTRUCTION OF NEW ORDERS.

The eighth New Order will not apply where the subpoena has been served under the former practice.

The eighth order of 26th August, 1841, directs that if the defendant being duly served with a subpoena to appear to and answer the bill, shall refuse or neglect to appear thereto, the plaintiff shall, after the expiration of eight days from such service, be at liberty to apply to the Court for leave to enter an appearance for the defendant, and such further proceedings may be had in the cause, as if the defendant had actually appeared.

An application was made on the part of the plaintiff for leave to enter an appearance for the defendant under this order. The subpoena had been served before the making of the new orders, and the defendant had neglected to appear.

The Vice Chancellor said, that the eighth order would not apply to cases where the subpoena had been served according to the practice, prior to the new orders.

Motion refused. — *Anon.*, Dec. 9th, 1841,

[The note of this case is imperfect, but we give it as our reporter understood the decision, and Vice Chancellor Wigram acted upon this construction of the eighth order, in the case of *Gregory v. Gregory*.]

Vice Chancellor Wigram's Court.

PRODUCTION OF DOCUMENTS. — SOLICITOR'S LIEN. — MASTER'S ALLOWANCE.

Where a solicitor permits a statement, by his client of a particular payment having been made by her as executrix, to be laid before the master, who allows it as an item of account, he cannot afterwards avail himself of the fact of such payment not appearing to have been actually made by her but by himself, so as to enable him to insist on his lien.

Mr. S. Sharpe moved for an order for the production of documents by the defendant, a solicitor. The plaintiff was a creditor of Thomas Chambers, deceased, and had filed a bill on behalf of himself and other creditors

against Mrs. Chambers the executrix, and other persons, the heir at law and devisees in trust. The usual decrees had been made against Mrs. Chambers for taking an account of the testator's debts. She had been called upon by interrogatories to state what documents were in her possession relating to the testator's estate. She mentioned a considerable number as being in possession of the defendant Field, who was solicitor to her husband and herself. Attempts had been made in the office, but without success, to compel Field to produce them. This was resisted on the ground of lien. A supplemental bill had been filed against him, in order to obtain the documents. In his answer he admitted the possession of various papers, and amongst others, certain documents obtained from a certificated conveyancer, who claimed a lien upon them until the sum of eight guineas was paid. The executrix in her charge and discharge, which was prepared by Field, stated that she had paid the sum demanded, and the Master allowed it in her account. She had admitted by her answer, that these particular deeds were received by her. Field, however, alleged that, in fact the eight guineas had not been paid by the executrix, but out of his own pocket, upon the faith that he should have them and retain his lien on them.

Mr. Walker *à contrà*, contended that this was an attempt to deprive the solicitor, not only of his ordinary, but also of his equitable lien, Mr. Field being a creditor. The motion was speculative. If the plaintiffs found upon inspection, that these deeds were material to their interests, they would pay what was due to the defendant and retain them; if they found them to be useless, they would return them, leaving him to get payment as well as he could. The proper party to produce these papers, was the executrix herself, as they were in her power. The Court could only act against her. The mere form of passing the accounts in the Master's office could not alter the real position, or affect the rights of Mr. Field.

The Vice Chancellor.—I think, out of regard to the practice of the Court, I must consider this as at all events a payment to Field's use. The Master never allows sums as due to an executrix, unless they are such as she has actually and really paid. In this case she carries in an account to the Master, as though she herself had actually paid this sum. Field denies that statement to be true, but the Master has allowed it out of the estate, which is thereby made the poorer. The Court cannot treat Field otherwise than as having been authorized by Mrs. Chambers in making the payment. It is rather a subtle way of getting at it, but it is a very substantial point as regards the practice of the Court. I have known many exceptions to Master's reports where an allowance has been made of sums which have turned out not to have been paid. Here, however, the defendant was aware of what had been done.

Motion allowed.—*Christian v. Field*, Dec. 9th, 1841. Lincoln's Inn.

Rolls.

CREDITOR.—ADMINISTRATION OF ASSETS.—COSTS.

A creditor who files a bill on behalf of himself and all other creditors of a testator or intestate, for the administration of such testator or intestate's estate, and is afterwards informed that there are no assets, proceeds with the suit at the peril of costs being decreed against himself.

This was a suit instituted by a simple contract creditor of the intestate in the pleadings mentioned, and the bill prayed that the usual accounts might be taken of the intestate's estate, and that the assets might be administered. Both before and after the institution of the suit, the plaintiff was informed by the solicitors of the administratrix that the intestate had left no assets applicable to the payment of his debt, and after the answer was put in, an offer was made on behalf of the administratrix to produce the intestate's books, and also the administration account, for the purpose of shewing that the intestate died insolvent. The plaintiff, however, still persisted in his proceedings, the accounts were taken in the Master's office, which fully confirmed the statements in the defendant's answer, but there being a sum of 204l. in Court applicable to the payment of specialty debts, the plaintiff insisted upon his right to be reimbursed all costs that he had incurred out of that sum.

Kindersley and Lewis for the plaintiff said, that the administratrix had given a judgment, and thus created a specialty debt, since the institution of the suit, and the holder of that judgment ought not, therefore, to be preferred before the plaintiff. The proceedings taken by the plaintiff being for the general benefit of the creditors, and there being a fund in Court, the circumstance of there being specialty debts ought not to deprive the plaintiff of his costs, even though it should be found that there was a deficiency of assets. *Barber v. Wardle*, 2 M. & K. 818. The administratrix could not deprive the plaintiff of an account by giving him notice of no assets, and threatening to saddle him with costs if he proceeded.

Pemberton, contrà, urged that it would be a scandal to the Court, if the rule adopted in former cases of compelling the plaintiff to bear all the costs of such a suit as this were not followed here. Even where the assets were shewn to be deficient after an examination of the accounts in the Master's Office, without any previous information being communicated, the costs were only given up to the decree, but in this case the fullest explanation was offered before any proceedings were commenced, and as the defendant had unnecessarily created all the expence that had been incurred, he was bound to indemnify all parties interested in the estate against any claim on account of them. *Bluett v. Jessopp, Jac. Robinson v. Elliott*, 1 Russ. 699; *Anon.* 4 Mad. 273.

The Master of the Rolls said the plaintiff had found at the end of the suit, that he had

gained no information beyond what was given to him before its institution, and although if a creditor's suit were properly instituted, even by a simple contract creditor, and assets were realized, he would be allowed his costs, although the assets should prove insufficient to satisfy the specialty debts, still this was not such a case, for the suit was neither properly instituted nor prosecuted. It was undoubtedly the right of every creditor to have an account, and to come to the Court for the purpose of obtaining it, but it does not follow that whether he does this wisely or improperly, he shall have his costs. Here the plaintiff was told the state of the assets before the institution of the suit, and an offer was made to him after the answer was put in, to inspect the books, but the offer was not accepted. The bill must be dismissed with costs, and the extra costs of the administratrix as between solicitor and client, must be paid out of the fund in Court.

King v. Hammett, Nov. 19, 1841.

Queen's Bench.

[Before the four Judges.]

ATTORNEY.—PRACTICE.—EVIDENCE.

An attorney may properly be asked whether he or his client has a particular document in his possession (although the attorney can only know of the existence of such document in consequence of holding that particular character,) the object being to enable the other party to give secondary evidence of the document.

Mr. Crennell moved for a rule to shew cause why the verdict given for the plaintiff in this case should not be set aside and a nonsuit entered. This was an action for an escape from custody in execution. The case was tried before Mr. Justice Wightman, at Liverpool. Two writs had been issued. One was in the hands of the officer. In order to connect the sheriff with the arrest, the plaintiff had to prove the warrant. The officer was called on to produce the warrant. He said that he had not got it in his custody. The defendant's attorney was called, and he was asked whether he had got the warrant. The question was objected to. The attorney was asked whether all the papers he held connected with the cause, had not come into his hands as attorney for the defendant, and for the purpose of defending this action; which question he answered in the affirmative. Upon this answer the objection was made that the attorney could not be asked whether his client had said he had this paper, for that, whether he obtained his knowledge from the verbal statements of his client or otherwise, made no difference, provided that he acquired it in his character of attorney in the cause. The learned judge however held that his having or not having the documents was a fact in his own knowledge, to which he was bound to answer, as the object was to let in secondary evidence of its contents. Secondary evidence of the warrant was then given. The opinion of the learned Judge was erroneous. The

case of *Robson, assignee of Blakey v. Kemp*,^a had settled the point the other way. That was a case where an attorney had come to the knowledge of a deed or instrument having been destroyed, from the circumstance of his being employed as an attorney, and it was held, that he could not be asked as to the fact, the knowledge of which was so obtained. In that case, Lord Ellenborough said,—“I think if the only knowledge he has as to the destruction of the instrument was acquired from the confidential communication made to him as an attorney, that he cannot be examined upon it.” The attorney here, was only the attorney in the cause; he was not the undersheriff, and therefore, he could only have acquired his knowledge in the character of attorney. [Mr. Justice Wightman.—The case on which I proceeded is that of *Bevan v. Waters*.^b In that case, notice had been given the day before the trial to produce a letter, the party living more than 100 miles from London; and Serjeant Wilde called the defendant's attorney, and asked him whether he had that letter in his possession. This was objected to by Mr. Serjeant Jones as a violation of the rule as to privileged communications. Lord C. J. Best said, that he recollected Lord Mansfield had decided that an attorney was bound to answer the question: the object was to let in secondary evidence, in case it was not produced; and therefore he thought the question right to be answered.] That object does not justify the compulsion on the attorney to answer the question. There is no information of which an attorney has, as such, become possessed that he can be called on to give against the interest of his client.

Lord Denman, C. J.—I never understood the rule to be so, and as there is a case directly in point on this subject, declaring that the question may be put for the purpose of letting in secondary evidence, we think that there is no ground for granting this application.

Rule refused.—*Coates v. Mudge*, M. T. 1834. Q. B. F. J.

Queen's Bench Practice Court.

ARBITRATION.—UMPIRE.—WAIVER.—ARBITRATOR'S NOTES.

An umpire cannot make an award from the notes of arbitrators except by consent, and if required by either party, he is bound to hear all the witnesses who have been examined by the arbitrators.

In this case certain matters in difference were referred to two arbitrators, and in case of their differing, to an umpire. The evidence was heard by the arbitrators, and they ultimately differed; and an umpire was accordingly appointed. He was requested by one of the parties to hear the witnesses who had been examined by the arbitrators. This he refused to do; as he thought that in order to entitle himself so to do, he must be requested by both parties. He

^a 5 Esp. 52.

^b Moody & Malkin, 235.

was furnished by the arbitrators with the notes which they had taken during the inquiry before them, and from them the umpire formed his opinion and made his award.

Smirke obtained a rule *nisi* to set aside this award so made, on the ground of the umpire having refused in the manner above described to hear the witnesses examined.

M. Smith shewed cause, and contended that the objection had been waived by the conduct of the parties.

Erle and *Smirke*, in support of the rule, contended that no proof of waiver on the part of the persons whom they represented, could be shewn. The umpire had been specifically requested to hear the witnesses, and had refused to do so. Without consent, he had no right to form his opinion from the notes of the arbitrators. No such consent had been given, and therefore, an award founded on such materials of opinion, was invalid.

Patteson, J., took time to consider.

Cur. adv. vult.

Patteson, J., thought that no waiver of the objection was shewn on the affidavit, and that the umpire was bound, if requested by either party, to hear the witnesses who had been examined, and the arbitrators. Here, he had been so requested, and no consent had been given to the umpire acting on the notes taken by the arbitrators. This being the case, and no waiver of the objection appearing, the award must be set aside.

Rule absolute.—*Re Arbitration of Jenkins and Wife and others*, M. T. 1841. Q. B. P. C.

PRODUCTION OF AGREEMENT.—STAMP.—
BUILDER'S ACCOUNT.

If an action is brought to recover certain items in a builder's account, and it appears that a certain portion of the work has been done pursuant to an agreement, it is necessary that the agreement should be produced, in order to ascertain what has been done pursuant to the agreement, and what not.

This was an action to recover the amount of a builder's account. The case was tried on a writ of trial before the Undersheriff of Warwickshire, and the plaintiff had a verdict in his favour. A question arose at the trial, whether the items sought to be recovered were included in an agreement which it was admitted existed between the parties. The defendant contended that the agreement must be produced. The plaintiff accordingly produced it; but on inspection, it appeared that it was unstamped. In the result the Undersheriff admitted the agreement in evidence, subject to an application to the Court, and the plaintiff had a verdict.

V. Lee obtained a rule to shew cause why the verdict should not be set aside on this among other grounds.

Hoggins shewed cause, and contended that it was unnecessary to produce the agreement, and consequently the objection to the want of a stamp could not prevail. The claim of the plaintiff was quite independent of the agree-

ment, and therefore no necessity could exist for the production of the agreement.

Lee, contra, contended that as the right of the plaintiff to recover at all must depend upon whether the plaintiff's claim was included in the agreement, it was impossible to determine that question without the production of the agreement itself.

Cur. adv. vult.

Patteson, J.—The question in this case is whether the agreement was collateral to the issue, or whether it was a necessary part of the case, and not collateral. Now, I think, it was a necessary part of the case, and not collateral. I have looked through the evidence, and must say there is not enough to fix the plaintiff. There were two items for money paid, but there was no proof of this having been paid by express authority. I don't see how it was possible to prove this without having recourse to the agreement. The agreement was so mixed up with the items, that I don't see how he could prove his case without producing that document, for the contents of the agreement were involved in the question in the cause. That objection, therefore, must prevail.

Rule absolute for a new trial.—*Parton v. Pole*, M. T. 1841. Q. B. P. C.

Common Pleas.

FORMA PAUPERIS. — TIME OF ADMISSION TO
SUE.

Plaintiff may be admitted to sue in formâ pauperis, pendente lite.

Mr. Serjt. Stephen shewed cause against a rule obtained on behalf of the defendant in this suit, for setting aside an order made by *Coltman, J.*, at Chambers, enabling the plaintiff to sue in formâ pauperis. The objection raised to the order was, that it had been made *pendente lite*. It appeared that in the month of August, after the delivery of the plaintiff's declaration, an application was made to the learned Judge for an order enabling the plaintiff to sue in formâ pauperis, which was granted, but subsequently the defendant having again applied to his Lordship, upon the authority of *Foss v. Racine*, 4 M. & W. 610, and *Lovewell v. Curtis*, 5 M. and W. 158; the order originally made was discharged. The plaintiff afterwards renewed his application, citing *Casey v. Tomlin*, 7 M. & W. 189; and the learned Judge made a fresh order. From the authorities in the books it was abundantly evident that the learned Judge's order was well founded. *Langley v. Blacherley*, Andrews, p. 306, which was decided in 1738, was decisive as to the practice 100 years ago, and it had remained unaltered up to the present time. *Tidd's Prac.* 8 ed. p. 93; *Tidd's Appendix*, p. 20; *Archb. Prac.* p. 790; *Blood v. Lee*, 3 Wils. 24; and *Oats v. Halliday*, there referred to; *Jones v. Peers*, 1 M'Clel. & Y. 282, were also cited.

Mr. Serjt. Storks, in support of the rule, relied upon the cases of *Foss v. Racine* and *Lovewell v. Curtis*, and the provisions of the

statutes 11 Hen. 7, c. 12, and 23 Hen. 8, c. 15, as shewing that such an order as had here been obtained could only be made at the commencement of the suit.

Tindal, C. J.—This case is to be decided upon the proper construction to be put upon the statutes, because the Court of Exchequer in *Cosey v. Tomlin*, has expressly left the question open to further discussion and consideration. The act of 11 Hen. 7 is obviously an enabling statute, intended to confer a boon upon the poor, for its very title is "A mean to help and speed poor persons in their suits;" and I do not see any reason why, upon its terms, we should hold that it was intended to confine its operation in respect of granting the right to sue *in forma pauperis* to cases where the application is made before or at the time of the commencement of the suit? Nor is there any reason why such a condition should be imported into its provisions; for why should a person be the less entitled to a benefit intended to be conferred by the legislature, because he has become a pauper after, and not before the commencement of the suit? Nor does the act of the 23 Hen. 8 lay the foundation for the distinction which has been attempted to be drawn, for that act, though it may require us not to look favorably upon persons in the position of the present plaintiff, by no means takes away the benefit of the previous statute. The authorities, besides, appear to me to be decisive in favour of the principle that a plaintiff may be admitted to sue *in forma pauperis, pendente lite*. The first case is *Langley v. Bluckerley*, decided in 1738, and there is also *Britton v. Grenville*, 2 Stra. 1120. In the latter case a defendant in ejectment obtained a trial at bar, on consenting to pay bar costs, and to receive only Nisi Prius costs, in the event of his becoming liable to them. After this the lessor of the plaintiff was admitted to sue *in forma pauperis*, which shews that the practice here contended for by the plaintiff then prevailed. And when we advert to the old rule of the Court of Exchequer (R. G. 3 Geo. 1, vide *Manning's Exch. Practice*, ed. 1), which provides that where a party is allowed to sue *in forma pauperis, pendente lite*, he shall give an undertaking that he will pay the costs already incurred, if he shall become liable to them, the general principle is clearly exhibited to be that which is sought by the plaintiff to be maintained. But after all, the act of the 11 Hen. 7, is nothing more than confirmatory of the common law, for in the very learned work of my brother Manning, on the office of *Serjeant at Law*, there is a case which occurred in the reign of Edward 4, from which we see that if a party would swear that he was unable to pay for entering his pleadings, the officer would be bound to enter them gratuitously. It seems to me, therefore, that the just conclusion upon this case is, that the plaintiff was entitled to be admitted to sue *in forma pauperis, pendente lite*, and that this rule must be discharged.

Colman, Erskine, and Maule, J.J., concurred.

Rule discharged, the costs to be costs in the cause.—*Brunt v. Wardell*, M. T. 1841. C. P.

Court of Exchequer.

AFFIDAVIT.—JURAT.—COMMISSIONER.

Where an affidavit is entitled in a cause, and the Court is named, the signature of the commissioner is sufficient with the addition of "a commissioner, &c.," without describing himself as a commissioner of the Court.

An application was made by Mr. Erle, to set aside a judgment on a warrant of attorney, on the ground principally of the affidavit of its execution being sworn before A. B. "a commissioner, &c.," without stating "of the Court of Exchequer." The affidavit was entitled in the Court with the name of the action. The cases of *The King v. Hare*, 11 East, 189; *Howard v. Brown*, 4 Bing. 393; and *Tarte v. Burnett*, 22 L. O. 319, were referred to.

Purke, B.—In the case of *Rea v. Hare*, the affidavit was not entitled in any Court, and in *Howard v. Brown*, the jurat was signed by a person who did not describe himself as a commissioner. In *Kennett and Avon Canal Company v. Jones*, 7 Term Rep. 451, it was decided by the King's Bench that an affidavit taken before a commissioner, but not described as a commissioner of that Court was sufficient.

Rule refused. *Birdkin v. Potter*, M. T. 1841. Exch.

[This case overrules the decision in *Tarte v. Barnett*, reported 22 L. O. 319.]

REFERENCE.—EXAMINING PARTIES.

An arbitrator can examine the plaintiff as a witness as well on his own behalf, as on that of the defendant.

Mr. *Humfry* moved to set aside an award, on the ground that the plaintiff had been improperly examined as a witness in support of his own case, such examination not being provided by the order of reference. In *Morgan v. Williams*, 2 Dowl. 125, it was held by Mr. Baron *Bayley*, that the arbitrator did right in saying he would not examine the plaintiff to prove his own case.* In *Warne v. Bryant*, 3 B. & C. 590; 5 D. & R. 301; there was a clause in the order of reference authorizing the arbitrator to examine the parties to the suit on oath, if he thought fit, and it was held that he might examine the plaintiff as to a point on which no other evidence was adduced on the same side. Here, however, the form of the order of reference was different.

Per Curiam.—The order of reference left a discretionary power in the arbitrator to examine either party, and the purposes for which they were to be examined were not restrained.

Rule refused.—*Wells v. Bonshin*, M. T. 1841. Excheq.

* In *Morgan v. Williams*, 1 Dowl. 611, the arbitrator examined the plaintiff.

Judgments.**Before THE LORD CHANCELLOR.**

Woodeock v. Renneck, *appeal*
 Mifford v. Reynolds, *ditto*
 Swan v. Bolton, *cause*
 Price v. North, *re-hearing*
 Rundell v. Lord Rivers, *exons.*

Before V. C. OF ENGLAND.

Salisbury v. Morrice

Before V. C. WIGRAM.

Salkeld v. Phillipps
 Raine v. Cairnes
 Jones v. Smith
 Taylor v. Clark.

Pleas and Demurrers.

V. C. of } Brown v. Weatherby,
 England } *plea*
 V. C. B. Balls v. Strutt, *demr.*

V. C. W. Trotter v. Durham
 Railway Company, *demurrer.*

Re-hearings and Appeals.

Blundell v. Gladstone—Ditto v.
 Stoenor—Ditto v. Blundell, *ap-
 peal part heard*

S. O. Addis v. Campbell, *ditto*
 Att. Gen. v. Wimborne School,
2 appeals

S. O. Kay v. Holder, *ditto*
 H. T. Everts v. Hall, *ditto*
Abated—Knight v. Frampton, *do.*

Attor. Gen. v. Earl of Stamford,
re-hearing

S. O. Mitford v. Reynold, *cause*
 S. O. Peyton v. Hughes, *re-hearing*

S. O. Attorney Gen. v. Southgate
 —Ditto v. Milner, *appeal*

Allen v. Macpherson, *ditto*
 Bayden v. Watson, *ex. & fur. dirs.*

Wilcocks v. Glaze, *exons. (from
 Eschequer)*

Attorney Gen. v. Kingston, *dem.*
(from Eschequer)

Ward v. Alsager—Ward v. Ward,
causes by order

BEFORE THE LORD CHANCELLOR.**CAUSES.**

S. O. Playfair v. Birmingham
 and Bristol and Thames Junc-
 tion Railway Company.

Thwaites v. Robinson

Duncan v. Campbell

H. T. Lovell v. Tomes

Curtis v. Mason

Page v. Hilton

Rolfe v. Wilson

Bowes v. Fernie—Bowes v. Gibbs

Lewis v. Lewis

Savill v. Savill

Morgan v. Hayward

Ward v. Pomfret, *fur. dirs. and
 petn.*

Hunsley v. Holder, *at def't's req.*

Abated—Webb v. Clarke

Smith v. Mackie

Booth v. Lightfoot

Barker v. Barker, *fur. dirs. & cs.*

Cole v. Hall

{ Heap v. Haworth, *exons.*

{ Ditto v. Ditto, *fur. dirs. and cs.*

Owens v. Dickenson

H. T. Grant v. Hutchinson

Boys v. Trapp

BEFORE THE VICE CHANCELLOR OF ENGLAND.**CAUSES, FURTHER DIRECTIONS AND EXCEPTIONS.**

Butcher v. Jackson—Jackson v.
 Butcher

S. O. Jones v. Jones, *fur. dirs. &
 costs*

Fletcher v. Northcote, *exns. 2 sets
 part heard*

S. O. Luckes v. Frost, *fur. dirs. &
 costs*

Barnaby v. Filby

S. O. Smith v. Pugh, *to amend*
Abated—Hughes v. Rogers, *fur.
 dirs. & costs*

Abated—Jumpson v. Pitchers—
 Dawes v. Jumpson

S. O. Dangerfield v. Evans, *after
 Hilary Term*

Busbell v. Hardley

S. O. Potts v. Pinnegar
 Attorney Gen. v. Slaughter

Bruin v. Knott

Carr (pauper) v. Barker
 Winkworth v. Marriott

Abated—Irving v. Elliott
 Bingham v. Hallam, *fur. dirs.
 and costs*

Cormouls v. Mole

Gedy v. Thorne, *fur. dirs. & costs*
 Jeffreys v. Hughes, *fur. dirs.
 and costs*

Hare v. Cartridge, *fur. dirs. & cs.*
 Attorney Gen. v. Pratt

Hall v. Deacon, *fur. dirs. and cs.*

Saxby v. Saxby, *fur. dirs. & petn.*
 Moses v. James

Barber v. Hollington, *exceptions*
 Doo v. London and Croydon

Railway Company
 Witherden v. Witherden

Godden v. Crowhurst

Atkins v. Hatton, *fur. dirs. & cs.*

Brydges v. Branfill

Barlow v. Lord, *fur. dirs. and cs.*
 Lee v. Jones, *fur. dirs. and costs*

Barrodale v. March—March v.
 Ditto, *Eschequer cause*

Gething v. Vigurs

Abraham v. Holderness

Cocks v. Edwards—Griffith v.
 Richards—Hawley v. Powell

Abated—Lindsey v. Godmond
 Attorney General v. Field

Lloyd v. Jones, *fur. dirs. & costs*

Thorncroft v. Crockett
 Breeze v. English

Hil. Tm. Hunt v. Thackrah

Hensfrey v. Hermon
 Goode v. Morgan

Allright v. Giles
 Ibbetson v. Selwin—Ibbetson v.

Fenton
 Green v. Green

Lee v. Burton
 Richards v. Wood, *exceptions and
 further directions*

Morrell v. Owen, *fur. dirs. & costs*
 { Liddell v. Granger, *exceptions*

{ Ditto v. Ditto
 Williams v. Roberts

Coore v. Lowndes

Abated—Smith v. Farr

Gibbs v. Gregory

Bonner v. Hatch

Doubeney v. Coghlan, *exons. & do.*

Davis v. Ld. Combermere, *exons.*

Scarborough v. Sherman

Abated—Davis v. Chanter—Ditto
 v. Bishop

{ Forbes v. Peacock, *exons.*

{ Ditto v. Ditto, *exons. by order*

Osbaldiston v. Simpson

Lyddon v. Woolcock

Hooker v. Brettal

Latour v. Holcombe

May v. Selby

Attorney Gen. v. Milner

Robertson v. Dean

Edgar v. Fry

Yoode v. Jones

Danks v. Otway

Alexander v. Foster, *exceptions*

Powell v. Powell, *fur. dirs. & cs.*

Pye v. Linwood, *ditto*

{ Campbell v. Campbell, *exons.*

{ Ditto v. Ditto, *fur. dirs. & costs*

Kirkwall v. Flight, *exceptions*

Griffin v. Williams

Bowmer v. Parkinson

Ford v. Clough, *fur. dirs. & costs*

Gurney v. Cowway, *ditto*

Eades v. Harris

Cooper v. Emery, *exceptions*

Kirkwall v. Flight, *fur. dirs. & cs.*

Price v. Harding, *ditto*

Jenkins v. Cooke

Sharman v. Heath—Howe v.

Ditto, *fur. dirs. & costs*

Charnock v. Charnock

Preedy v. Baker

Smith v. Baker, *exons & fur. dirs.*

Massey v. Day

Mayor and Corporation of Car-

narvon v. Evans

Allen v. Wadley

Langford v. Reeves

Collins v. James

Compton v. Storey

Fairfax v. Morrell

Vickers v. Oliver

Powell v. Woollam

Russell v. Buchanan

Cottingham v. Stapleton

Watson v. Webb

Attorney Gen. v. Baines

Trevor v. Trevor, *exons. 3 sets*

Birch v. Joy, *exons. 2 sets & petn.*

Bird v. Blyth

Farmer v. Farmer

Genge v. Matthews

Mason v. Frankling

Scott v. Pascall

Vivian v. Swansea

Water Works Company

Cragg v. Forde, *exons. 2 sets*

Petty v. Briggs

Burden v. Oldaker

Seagar v. Smith

Wright v. Taylor—Ditto v. Frith

Hirst v. Bradley

Goodricke v. Thaker

Attorney-Gen. v. Mayor of Bris-

tol, *after Hilary Term*

Wade v. Russell

Warne v. Greene

Warden, &c. of Clun Hospital v. Earl Powis
 Barnano v. Vitter
 Fuller v. Woods
 Scott v. Rideout
 Sheppard v. Clutterbuck
 Sykes v. Gyles
 Cobley v. Wells
 Cozens v. Cozens
 Gibson v. Prosser
 Gawn v. Gawn
 White v. Husband
 Kenward v. Henty
 Robertson v. Great Western Railway Company
 Minor v. Minor
 Harrison v. Lane
 Colby v. Scotchmer
 Lord Muncaster v. Lady Muncaster
 Dixon v. Clarke
 White v. Hunt
 Lovell v. Yates
 Kuse v. Lawson
 Moore (pauper) v. Dearden
 Carr v. Collins, *fur. dirs. & costs*
 Talbot v. Andrews, *ditto*
 Mackintosh v. Henderson, *ditto & petition*
 Roberts v. Corpn. of Carnarvon
 Edwards v. Williams, *fr. dirs. & c.*
 Edwards v. Williams, *fur. dirs.*
 Hemingway v. Fernandes
 Motley v. Marsden
fur. dirs. & costs
 Corney v. Tribe, *ditto*
 Parker v. Marchant, *ditto*
 Poyntz v. Holden
 Clough v. Bond—Collins v. Collins
 Wade v. Hadfield, *fur. dirs. and costs*
 Hawley v. Hawley
 Turner v. Larkiu, *fur. dirs. & petn.*
 Phillips v. Miller
 Lee v. Burr
 Salwey v. Salwey
 Henderson v. Banks
 Turner v. Hyde
 Matthews v. Gabb
 E. Amhurst v. Duchess of Leeds
 Attorney General v. Mayor, &c. of Chesterfield
 Ihler v. Davies and Bainbridge
 Wright v. Harrison
 Flint v. Rice
 Payne v. Bristol & Exeter Railway Company

BEFORE

**VICE-CHANCELLOR
 KNIGHT BRUCE.**

Tulloch v. Hartley, 2 causes
 S. O. Christison v. Mayor, &c. of Berwick, *exms. 2 sets from Eschequer*
 Mayor of London v. Combe, *from Eschequer*
Abated—Chambers v. Middleton, *ditto*
 S. O. Higgins v. Higgins

Abated—Moore v. Moore, *fur. dirs. and costs*
 Attorney General v. Brandreth
Abated—Lyse v. Kingdon
Abated—Sutton v. Maw
Abated—Nedby v. Nedby
 S. O. Milbank v. Stevens
Abated—Griffiths v. Griffiths
 S. O. Cort v. Winder
 Osborne v. Harvey
 S. O. Bastin v. Bastin
 “ Clamp v. Clarke, *aff. Hll. T.*
 Howell v. Tyler, 2 causes
 S. O. Graham v. Williams, *fur. dirs. and costs*
 Claridge v. Dyneley
 20th Dec., Bristow v. Woods, *fur. dirs. and costs*
 H. T. Lythgoe v. Martin
 Boughton v. James — Ditto v. Prosser
 Knapp v. Harper
 Chafey v. Serjeant
 Dobree v. Schroder, *exceptions*
 Vickers v. Hardwick
 King v. Green
 Moorhouse v. Colvin
 Barfield v. Rogers
 Burton v. Manson
 Meigh v. Baker
 Brown v. Edwards
 Overt v. Patching
 Lake v. Bartholomew
 Mann v. Mills
 Wright v. Lockwood
 Vicq v. Le Bailey
 Fisher v. Great Western Railway
 Attorney General v. Bath—Ditto v. Reynolds
 Cockburn v. Singleton
 Taylor v. Bailey
 Attorney General v. George, *fur. ther directions and costs*
 Branch v. Paimrose, *ditto*
 Shore v. Lee, *ditto*
 Godson v. Atther, *ditto*
 Cole v. Stutely, *fur. dirs. & costs*
 Bell v. Saunders, *ditto*
 Dormay v. Walsmaley
 Sillick v. Booth, *exceptions*
 Witty v. Marshall
 Taylor v. Rundell, *exceptions*
 Baillie v. Innes, *ditto*
 Sharp v. Taylor
 Dunderdale v. Walton
 Newton v. Hartley, & *petn.*
 Clifford v. Turrell
 Cort v. Winder
 Jones v. Lewis
 Evans v. Bower
 Harman v. Grainge
 Bunny v. Frankum
 Holland v. Clark
 Fulcher v. Fulcher, 4 causes
 Oswald v. Landles
 Bourne v. Walker
 Beckett v. Overton
 Edwards v. Hillier
 Attorney Gen. v. Elcox
 Sloper v. Sloper
 Tanner v. Long
 Kelly v. Hooper
 Buckett v. Church
Abated—Stephens v. Williams
 Galbreath v. Ward

White v. Rigge
 Young v. Waterpark
 Hickling v. Boyer
 Wentworth v. Tubb
 Ireland v. Cox
 Wright v. Marston
 Dartmouth Corpn. v. Holdsworth
 Lade v. Trill
 Watkins v. Briggs
 Samuel v. Gibbs
 Midgley v. Midgley
 Coppin v. Gray
 King v. Chuck
 Weston v. Peache
 Fry v. Wood
 Fanning v. Devereux
 Keen v. Birch, *fur. dirs. & petn.*
 Hall v. Rawdon

BEFORE

**VICE CHANCELLOR
 WIGRAM.**

Lewis v. Adams, *Eschequer cause*
 E. T.—Wyndham, now Earl of Egremont v. Young
Abated—Neesom v. Clarkson
 Tomlin v. Tomlin
Abated—Owen v. Williams
 Stone v. Matthews, *exceptions, further directions and costs*
 Penfold v. Giles, *exceptions*
 Ewing v. Trecothick, *ditto*
 Sharp v. Manson
 Walker v. Jefferys
 Moore v. Moore
 Frith v. Frith
 Meux v. Bell, *fur. dirs. & costs*
 Tyrer v. Moore
 Whittaker v. Wright
 Barton v. Curlewis
 East India Co. v. Coopem's Co.
 Slagg v. Owen
 Fewster v. Turner
 Holt v. Horner
 Hadfield v. Cullingworth
 Thomas v. May
 Blakesley v. Whieldon
 Harrison v. Child
 Browne v. Smith—Browne v. Lockhart
 Hodges v. Daly
 Willett v. Blandford
 Perkins v. Bradley
 Ridley v. Lashmar
 Monk v. Earl Tankerville
 Lloyd v. Mason, *fur. dirs. & costs*
 Heslop v. Bank of England, *ditto*
 Milne v. Bartlett, *ditto*
 Fredericks v. Wilkins, *ditto*
 Culley v. Culley
 Roach v. Peters, *fur. dirs. & costs*
 Moody (Pauper) v. Hebbard
 Gray v. Mumbray
 Williams v. Roberts
 Coulton v. Middleton, *fur. dirs. & equity reserved*
 Williams v. Moore
 Vanderplank v. King
 Gardner v. Blane
 Buxton v. Simpson
 Horlock v. Smith, *exceptions*
 Greene v. Warne
 Appleby v. Duke

Baylie v. Martin
 Hutchings v. Batson
 Wale v. Moores
 Mattalieu v. Miller
 Forsyth v. Chard, *fur. dirs. & cs.*
 Capel v. Hughes
 Allen v. Cornfield
 Fitzpatrick v. Newton
 Cogger v. Wickes
 Egginton v. Burton
 Stocken v. Chuck
 Pullen v. Haverfield
 Cash v. Belsher
 Williams v. Ellis
 Ranger v. Great Western Railway
 Wright v. Rutter
 Aspinall v. Andus
 Morgan v. Elstob
 Harrison v. Lane
 Body v. Lefevre
 Hopson v. Croome
 Parry v. Jebb
 Cooke v. Black

Davies v. Thorne
 Middleditch v. Saunders
 Hodgson v. Lowther
 Wansey v. Towgood
 Evans v. James
 Christian v. Chambers, *fur. dirs. and costs*
 Eld v. Durant
 Stephenson v. Everett
 Barfoot v. Buckland
 Stiven v. Jenkins
 Dyson v. Morris
 Bultell v. Lord Abinger
 Attorney General v. Mayor and Corporation of Newark
 Trevanion v. Sargon
 Bullivant v. Taylor, 2 causes
 Willetts v. Willetts
 Crawford v. Fisher
 Taylor v. Jardine
 Attorney General v. Cowper
 Spence v. Butler—Gunn v. Ditto, *fur. dirs. and costs*

Bute v. Stuart, *exons.*
 Plunkett v. Lewis, *exons. & fur. dirs.*
 Hand v. Wrench
 Gill v. Rundle
 Johnson v. Child
 Rogers v. Ashcroft
 Dunn v. Dunn, *fur. dirs. & costs*
 Tipping v. Power, *ditto*
 Baron Alvanley v. Edwards
 Booth v. Alington
 Clare v. Wood
 Hetherington v. Hesseltine
 Thomas v. Williams
 Sutton v. Torre
 Robinson v. Milner, *exceptions*
 Rawson v. Cheyne, *fur. dirs. & cs*
 Alderson v. Jones
 Williams v. Allen
 Schultes v. Ward
 Batty v. Heycock
 Barton v. Payne, *exceptions*
 Westwood v. Callam
 Duncan v. Snook

DISTRINGAS ORDERS IN CHANCERY.

A NEW ORDER has been drawn, relating to the practice of distringas, and the objectionable form of the affidavit will be altered. (See p. 49. *ante*.)

THE EDITOR'S LETTER BOX.

We are obliged to a correspondent regarding an important case at the Judges' Chambers, but cannot attend on the occasion referred to. If a short report of the result be sent, we will consider it.

We think it will be expedient to postpone the further letters we have received on the certificate duty till the meeting of parliament. We agree with an able correspondent, that some tax should be suggested to government of equal amount.

A Subscriber inquires whether the bishops have authority to appoint, as sequestrators, their own registrars or attorney, in preference to the creditor at whose suit the *fi. fa.* has been returned, notwithstanding such creditor is a man of respectability, and will give the usual or any indemnity to the bishop. It appears that in the diocese of the Archbishop of York, the practice is to appoint the creditor or any person named by him.

A correspondent inquires whether a cognovit, given by a defendant, who is himself an at-

torney, would be valid, if attested by the plaintiff's attorney or clerk, and not by an attorney named by the defendant, and attending on his behalf in the terms of the act. He refers to *Dne d. Portland v. Roe*, p. 47, *ante*, where it was held that personal service of a declaration in ejectment, on a defendant, who was an attorney, is good service, although the nature and meaning of such service was not explained to him, as is required with other defendants in ordinary cases. He also asks whether an attorney of the Court of Common Pleas, at Lancaster, is competent to attest a cognovit, as the act only requires an attorney of one of the Superior Courts, without adding "at Westminster."

The Letters of R. W. I.; and X., have been received.

We suppose that an Attorney at Bristol has no other remedy than by action.

We have received some communications regarding the absence of counsel in one court in consequence of being engaged in another, to which we shall attend.

The *Legal Almanac and Diary* for 1842, may be obtained of the publisher *interleaved*, so as to afford a space equal to a whole page for each day, and in this way, we believe it will answer the purpose of all classes of subscribers.

The Fourth Part of the *Quarterly Digest*, will put our readers in possession of all the cases reported down to the last term, in all the Courts.

The Legal Observer.

SATURDAY, DECEMBER 18, 1841.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LAW OF JOINT-STOCK COMPANIES.

PAYMENT OF CALLS.

THE law of joint stock companies is of such growing importance in this country; the amount of property embarked in them is so large and increasing, and its relations and bearings so unsettled, that we have recently lost no opportunity of bringing under the notice of our readers all cases of interest on the subject as soon as they have been reported. We have already had occasion to observe, that the tone of the judges with respect to these undertakings, is greatly changed. They are no longer discountenanced, their advantages are recognised, and their operations are facilitated.

There is no point relating to them of greater importance than the payment of calls; and it will be seen that in this respect the courts of law have recently given every reasonable facility to their recovery. It is in this respect that one peculiarity of these companies is most readily shewn. Shares are purchased in these companies as a speculation, without always reflecting on the liabilities incurred by the holders. They are purchased for the purpose of re-sale, and if they cannot be sold at a profit, the purchasers begin to grow discontented. Forgetting that if their shares had risen in value they would have been perfectly content, they now endeavour to find some plea of evading engagements in which the purchase of them has involved them. We have already collected the principal cases on this subject,^a but we now wish to draw attention to a particular point of considerable importance.

^a See 20 L. O. 274.

It is manifest that much inconvenience would arise, if, when every action for a call were brought, an inquiry should be allowed whether the company had in point of fact done every thing that was intended to be done. There must be some limit to the right of the shareholders to resist the payment of calls on grounds of this nature.

Thus, in an action for calls by the Brighton Railway Company, where the defence was, amongst other things, that there had been a deviation from the original line, and that the money called for was in respect of such deviation; the Court said, the effect of allowing such an answer would be, that if there were any deviation to the extent of three yards, with the consent of the person whose land immediately adjoins, and at the wish of the directors and of the company generally, every individual subscriber, from the moment of that deviation, may stay his hand and refuse his call, and the whole concern be broken up altogether, and accordingly the plea was disallowed.^b So also, in the same case, a plea that fewer shares had been allotted than were required by the statute, was held not to be an available plea, for although the whole number of shares had not been allotted, yet they existed in contemplation of law.

And this case has been still more recently acted on by the Court of Queen's Bench. In the act establishing a railway company, the company were allowed to declare generally that the defendant being the proprietor of a share, was indebted to the company in such a sum as the calls should amount to, whereby an action had accrued, without setting forth the special matter; and it was also provided, that at the trial of such an

^b *London and Brighton Railway Company*, 6 Bing. N. C. 135; 8 Dowl. 40.

action, it should only be necessary to prove that the defendant, at the time of making such calls, was the proprietor of a share, and that such calls were in fact made, and that such notice was given as directed by the act, without proving the appointment of the directors who made the calls, or any other matter whatsoever, and the Court, in their discretion, under the statute of Anne, out of the following pleas, allowed the first three only. 1. *Nunquam indebitatus*. 2. That defendant was not a proprietor. 3. That the shares were forfeited. 4. That at the meetings at which the calls were made, there was not present a competent number of the directors who had paid up previous calls. 5. That no notice had been given of the calls as required by the act. 6. That no time or place for payment of the calls had been appointed as required by the act. 7. That the calls were not made for the purpose of the undertaking. 8. That the calls were not made upon all the shareholders, as required by the act. 9. That the calls were not made by competent persons. Lord Denman, C. J. said,—It is not necessary in these cases to determine whether the defences sought to be pleaded can or cannot be given in evidence under the plea of *nunquam indebitatus*. It is sufficient to say that we consider most of them to be quite contrary to the provisions of the act of parliament under which the actions are brought, and that on the exercise of our discretion under the statute of Anne, we shall be governed by the same views which the Court of Common Pleas adopted in the two cases cited. *London and Brighton Railway Company v. Wilson*, 6 Bing. N. C. 135; and *Same v. Fairclough*, 6 Bing. N. C. 270.^c

As most acts of parliament and deeds of settlement constituting public companies, contain similar clauses, it will be seen that these cases are of considerable importance, as greatly restricting the defence which can be made to actions for calls.

NOTES ON EQUITY.

VOLUNTARY SETTLEMENT.

It is a well settled rule of equity, that the Court will not interfere for the purpose of giving effect to a voluntary settlement. *Pulvertoft v. Pulvertoft*, 18 Ves. 84; *Forrescue v. Barnett*, 3 Myl. & K. 36; *Hale v.*

^c *South Eastern Railway Company v. Hobbleswhite and others*, 4 Per. & Dav. 246; see also *Edinburgh Railway Company v. Hibblewhite*, 6 M. & W. 707.

Lamb, 2 Eden, 292; *Ward v. Audland*, 8 Sim. 571. In the case of *Ellis v. Nimmo*, Lloyd & Goold, 333, *Sugden*, I. C., to some extent disregarded this rule, and decreed the specific performance of a contract founded only on meritorious consideration; but in the case of *Dillon v. Coppin*, cited 1 Cr. & Ph. 141, Lord Cottenham, C., was understood in effect to have overruled this case. In a still later case, the circumstances were these: a father, having by a voluntary settlement, conveyed certain freehold, and covenanted to surrender certain copyhold estates to trustees in trust for the benefit of his daughters, afterwards devised part of the same estates to his widow, who after his death, was admitted to some of the copyholds. A suit having been instituted by the daughters, to have the trusts of the settlement, &c. carried into effect, and to compel the widow to surrender the copyholds to which she had been admitted, a decree was made for carrying the trusts, so far as they related to the freeholds, into effect, the plaintiff's title to them being complete; but as to the copyholds, the bill was dismissed with costs. "The title," said Lord Cottenham, "of the plaintiffs to the freehold is complete, and they may make a decree for carrying the settlement into effect, so far as the freeholds are concerned. With respect to the copyholds, I have no doubt that the Court will not execute a voluntary contract, and my impression is, that the principle of the Court is to withhold its assistance, applies equally whether he seeks to have the benefit of a contract, a covenant, or a settlement. As, however, the decision in *Ellis v. Nimmo* is entitled to the highest consideration, I will not dispose of this case absolutely, without looking at a former case (*Dillon v. Coppin*), on which I had occasion to refer in that decision. Unless I alter the opinion I have expressed, the bill must be dismissed with costs, so far as the copyholds are concerned." On a subsequent day, his Lordship said he had looked at the case alluded to, and saw no reason for altering the opinion he had before expressed. *Jefferys v. Jefferys*, 1 Cr. & Phil. 138.

COSTS OF TRUSTEES.

We have repeatedly called attention to the cases as to which trustees are liable. See 11 L. O. 177; 18 L. O. 385; and we have recently adverted to the rule as to the costs which a trustee will be called on to pay. See 20 L. O. 499. We may add that it has recently been held, that trustees

were decreed to pay out of the trust estate the costs of a suit occasioned by their legal doubts in a plain case. *Burrows v. Greenwood*, 4 Y. & Col. 251.

DEMURRER FOR VAGUENESS.

A bill was filed by the assignees of a bankrupt, alleging that previous to the bankruptcy, "certain dealings and transactions took place between the bankrupt and defendant," and that by virtue of "certain agreements for leases, the bankrupt was possessed of certain leasehold houses," and that the defendant from time to time made "certain loans" to the bankrupt, and the bankrupt, as it was alleged by the defendant, made "some lease" or assignment of the property to the defendant, and other similar indefinite statements, and prayed on account, &c. that the rights of the parties might be ascertained. To this bill, a general demurrer was filed for want of equity, on the ground that the plaintiff had not, by the bill, stated any *certain* case upon which a Court of Equity would grant any relief. Lord Langdale, M. R., intimated that he did not see how a bill, the statements of which were so vague and uncertain, could be supported. *Wormald v. De Lisle*, 3 Bea. 18.

PROPOSED FURTHER CHANCERY REFORMS.

THE *quasi* commissioners appointed by the Lord Chancellor "to consider the *practice, course of proceeding, and offices* of the Court of Chancery, with reference to such regulations and alterations thereof as it would be expedient to make for the purpose of diminishing the expense and delay attending the administration of justice in the Court of Chancery," are proceeding, we understand, with their labours. Mr. Enfield, the solicitor to the Suitor's Fund, has been appointed Secretary, and observations and suggestions have been invited from certain solicitors and officers of the Court.

We have from time to time assisted in awakening attention to the important subjects now under consideration, and shall continue to lend our aid in the further inquiries now instituted. On the one hand, we shall endeavour to promote, so far as practicable, the objects of the Equity Judges in improving the practice and proceedings of the Court, and rendering the offices more effective; and on the other, it will be our duty to consult the convenience and just interests of the profession.

We shall from time to time state the practical evils which exist, and the remedies to be applied: and we recommend our correspondents to point out such causes of delay and inconvenience as they have *personally* experienced in the course of their own practice. We incline to think that the very first alterations should be directed to the Chancery Offices, the Six Clerks, the Masters, and the Registrars and Report Offices. Here, we believe, will be found an abundant source of delay, equally injurious to the suitor and solicitor; and we should like to see an effectual change in these *administrative* departments—the machinery of the Court—before any material alteration be tried in pleadings and practice.

We shall endeavour to put our readers in possession, not only of all that is done, but all that is projected.

NEW ORDER OF COURT.

DISTRINGAS RELATING TO STOCK.

Friday, the 10th day of December, in the 5th year of the reign of her Majesty Queen Victoria, 1841.

THE Right Honorable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honorable Henry Lord Langdale, Master of the Rolls, the Right Honorable Sir Lancelot Shadwell, Vice Chancellor of England, the Honorable the Vice Chancellor James Lewis Knight Bruce, and the Honorable the Vice Chancellor James Wigram, and in pursuance of an act passed in the 5th year of the reign of her present Majesty [cap. 5.] intitled "An act to make further provision for the administration of justice," doth hereby ORDER and direct in manner following, (that is to say,)

That the affidavit required by the second of the orders of the 17th Nov. 1841,* shall, instead of being in the form set out at the foot of those orders, be in the form following:—

"A. B., [the name of the party or parties in whose behalf the writ is sued] v. The Governor and Company of the Bank of England.

I, of , do solemnly swear that, according to the best of my knowledge, information and belief, I am, [or, if the affidavit is made by the solicitor, A. B. of , is] beneficially interested in the stock hereinafter particularly described, that is to say, [here specify

* See p. 35, ante.

the amount of the stock to be affected by the writ, and the name or names of the person or persons, or body politic or corporate, in whose name or names the same shall be standing]

(Signed) "LYNDHURST, C.
LANGDALE, M.R.
LANCELOT SHADWELL, V.C.
J. L. KNIGHT BRUCE, V.C.
JAMES WIGRAM, V.C."

[This order does not meet all the suggestions which have been made to supply the defects of the orders of the 17th November. A trustee cannot make an affidavit that he is "beneficially" interested. Ed.]

THE LAW RELATING TO CLUBS.

IN our thirteenth volume, (see also 22 L. O. 481,) we stated the law relating to the liabilities of members of clubs, and we there found the rule to be, that the members of a club, merely as such, were not liable for debts incurred by the committee, for work done or goods supplied to the club; for that the committee had no authority to pledge the personal credit of the members. In a late case, *Todd v. Emly*, 7 Mee. & W. 427, this principle has been carried further, and it has been held that a committee-man is not in many cases liable. As the subject is of much general interest, we shall state the reasons of the decision.

It seems quite clear, that under almost any other association than a club, a person so situated would be liable. Thus in *Horsley v. Bell*, Ambl. 770; 1 Bro. C. C. 101, an act of parliament having been passed to make a certain brook navigable, the defendants and others were named commissioners to carry the act into execution, by which tolls were to be taken, and the commissioners were empowered to borrow money thereon. A treasurer and surveyor were appointed and the work was commenced. The defendants were all acting commissioners by whom the plaintiff was employed to do certain work in prosecution of the scheme, and to whom they gave orders from time to time. These orders were given at different meetings by such of the defendants as were present, but none of them were present at all the meetings at which the orders were given, so that the defendants did not join in all the orders, but every one of them joined in making some one of the orders, and they were all held liable. But the rule is different in the case of a club. The reasons are clearly stated by Lord Abinger and Mr. Baron Parke as follows (the other barons concurring.) "It is difficult," says the latter, "to say that there was not some evidence to go to the jury; because the defendant's acts in attending meetings, and offering sums of money by way of compromise to the creditors, are undoubtedly evidence to go to the jury. I do not say, that it is evidence to which one ought to attach much weight; but if I were asked the question, whe-

ther there was or not some evidence to go to the jury. I should certainly hesitate before I said there was not. It is the jury who are to put a construction on those acts. I think, however, that the construction put by my Lord upon one of those acts is that which the jury ought to put upon it, namely, an attempt as men of honour, to get up a subscription among themselves, in order to let the tradesmen go harmless; but I think it cannot be considered as an admission of liability. If it is contended, that that attempt at a settlement was an admission that the committee were authorized to enter into the contracts, it is a question for the jury. Then we come to the other, which is the main point of the case, and upon which it may be urged, that where parties enter into one common purpose of acting together, each of them has authority to bind the others to the extent of attaining that common purpose. But the defect in the plaintiffs' case is, that there is no common purpose shewn of dealing on credit for such articles as were supplied in this case. The evidence shews that a fund was subscribed, which fund was to be administered by a committee. The committee can only be supposed to have agreed to do that which the subscribers to the club had power themselves to do, that is, to administer that fund so far as it went. They were not expected to deal on credit, except for such articles as it might be immediately necessary for them to have dealt for on credit. The making purchases of what was necessary would be only what they ought to do, according to the trust reposed in them, and these must be taken to be purchases for ready money, unless distinct evidence was given that they were authorized to enter into contracts on the part of the general body for the common purpose, and to deal on credit, so as to make one the agent for another. It might be different, perhaps, in the case of hiring the servants of the establishment, where there must necessarily be credit for a certain period, because you cannot pay wages down; but as to butchers' meat, wine, furniture, and almost anything else, those may be ready money transactions. Unless there is some evidence to the contrary, each member of the committee must be considered as exercising only a concurrent authority with the others in the due administration of the fund, and obtaining credit for such matters only as cannot be the subject of ready-money transactions. My impression, therefore is, that although there might be some evidence on the latter part of the case to go to the jury, though very slight, yet that on the former part of the case the plaintiffs have failed, that is, they have not shewn, with sufficient clearness, any privity on the part of the defendants to the contract, or any knowledge that any committee-man was authorized to deal upon credit for the others. *Todd v. Emly*, 7 M. & W. 427.

We may here mention that this subject is particularly considered in the third edition of Mr. Wordsworth's Law of Joint Stock Companies, which is a useful work, and much improved.

**EXAMINATION FOR THE DEGREE OF
BACHELOR OF LAWS AT THE LON-
DON UNIVERSITY.**

Monday, November 8, 1841.

Examiner, Mr. GRAVES.

Morning Examination.

**THE LAST THREE VOLUMES OF KENT'S COM-
MENTARIES.**

I.—1. Explain the rights of the husband in the fee simple of the wife; 2. in her freehold life estate; 3. in her chattels real; 4. in her personal property in possession; 5. in her choses in action.

II.—1. Distinguish between the void acts and the voidable acts of an infant. 2. Particularize the rules of law as to the confirmation of an infant's voidable acts. 3. Specify the liabilities and immunities of infants in actions and suits.

III.—1. Explain the rules which determine the master's liability for the contracts, and, 2. for the torts of his servant.

IV.—Trace historically the progress of the power of alienation of property.

V.—Give a summary of the rules determining the ownership of fixtures.

VI.—1. Explain the order of priority in the payment of a deceased person's debts, and, 2. the rules of distribution of personal property in case of intestacy.

VII.—1. Define (a) contract; (b) consideration. 2. Explain the principal legal distinctions between consideration executed and consideration executory. 3. Distinguish, with respect to consideration, (a) bills of exchange and promissory notes; (b) other parol contracts; (c) specialties.

VIII.—1. In cases of goods sold, how far and in what cases is there any implied warranty? 2. Distinguish the circumstances wherein a contract may be rescinded from those wherein the only remedy is an action for damages.

IX.—1. Explain the different kinds of lien upon personal property, and, 2. the different ways in which lien may be created.

X.—1. Explain stoppage *in transitu*. 2. Give examples of such delivery as is sufficient to determine the vendor's right of stoppage. 3. Explain the different practical effects that would result from considering the stoppage as creating a lien, or as a rescission of the contract.

XI.—1. What is the ordinary division of bailments? 2. Under what three classes may bailments be arranged? 3. State the rules as to the liability of bailor and bailee in each of the three classes referred to.

XII.—1. How far can the acts of one partner bind the firm? 2. Explain the legal consequences of a dissolution of partnership (a) as to the former partners, (b) as to third persons; (a) with notice; (b) without notice of dissolution.

XIII.—1. Define the terms charter party, bill of lading, freight, general average, salvage.

2. In what cases does the maritime law apportion the loss occasioned by the collision of ships?

Afternoon Examination.

I.—1. In what cases may goods be distrained for rent? 2. Enumerate the other remedies for the recovery of rent, distinguishing the cases of rent reserved by specialty and rent reserved without deed.

II.—Define the requisites to a tenancy by the curtesy.

III.—Explain the law of emblements.

IV.—Explain severally the legal and equitable rights of mortgagor and mortgagee.

V.—1. Define remainder. 2. Distinguish between vested and contingent remainders. 3. Enumerate the modes of destroying contingent remainders. 4. Explain the operation of the provision for the support of contingent remainders ordinarily inserted in settlements.

VI.—1. Distinguish executory devises from remainders. 2. Enunciate the rule against perpetuities.

VII.—1. Give a concise account of the introduction of uses. 2. Explain the principal legal differences between conveyances operating at Common Law and conveyances operating under the Statute of Uses. 3. Explain the nature of powers.

VIII.—1. Explain the manner of creating trusts. 2. Mention the principal peculiarities of trusts as distinguished from legal estates. 3. Distinguish between the properties of executed and of executory trusts.

IX.—1. Explain the equitable effects of notice. 2. Explain the operation of attendant terms in protecting purchasers.

X.—1. State the provisions of the Statute of Frauds with respect to interests in land. 2. In what cases will equity decree the performance of a parol contract to convey?

XI.—1. What circumstances are necessary to the due execution of a deed? 2. To what cases is a deed of grant applicable? 3. Explain the operation of a covenant to stand seised. 4. Explain the operation of lease and release.

XII.—1. Distinguish joint-tenancy from tenancy in common, as to mode of creation and as to legal consequences. 2. How may joint-tenancy be severed?

**THE TWO PORTIONS OF DUMONT'S EDITION
OF BENTHAM'S MORALS AND LEGISLATION
WHICH CONTAIN THE PRINCIPLES OF A
CIVIL CODE AND THE PRINCIPLES OF A
CRIMINAL CODE.**

Morning Examination.

I.—1. What is the chief end, and what are the subordinate ends of civil legislation? 2. Explain the relative importance of the subordinate ends, and the extent to which positive laws are capable of contributing towards each of them. 3. Give examples of the manner in which they may conflict, and show what would be the consequence of establishing as a principle that all men should have equal rights.

II.—1. In what does property consist, and to what extent can it exist independently of

law? 2. What are the chief evils resulting from the infringement of proprietary rights? 3. Enumerate the leading maxims which set limits to proprietary rights.

III.—1. Specify the principles which ought to regulate the acquisition of property by prescription, and, 2. the principles which ought to regulate the adjustment of mutual rights when the labour of one man has been expended upon a thing belonging to another.

IV.—1. State the advantages of free powers of alienating property *inter vivos*, and 2. the ordinary motives for restraints upon such alienation.

V.—Give examples of ordinary, but improper, legislative infringements upon security.

VI.—What are the inconveniences of a voluntary provision for the poor, and to what extent ought the poor to be relieved by law?

VII.—What conditions must be fulfilled in order that laws should be in conformity with the general expectation of the people governed?

VIII.—1. In framing a law of succession to the goods of a deceased person, what ought to be the main objects of the legislator? 2. What would be the most simple plan of succession among relatives? 3. State the principal heads of the plan proposed by Bentham.

IX.—1. Explain the advantages of allowing a power of testamentary disposition, and the consequences of the absence of such a power while alienation *inter vivos* is allowed. 2. State the arguments in favour of a limited power.

X.—1. Explain the meaning of the word services, as understood by Bentham, and explain the manner in which rights to services and proprietary rights may become blended. 2. Mention some leading bases of arrangement for classing services. 3. State the objects which a legislator ought to have in view in creating legal rights to services.

XI.—1. Define pact, and explain the principle upon which Bentham rests the duty of the legislator to sanction the validity of pacts. 2. By what means, and for what reasons ought pacts to be dissolved, and when ought a party to be excused from performance on making compensation?

Afternoon Examination.

I.—1. Define offences, (a) private; (b) self-affecting; (c) semi-public; (d) public. 2. Enumerate the subdivisions of each of these four classes.

II.—1. Distinguish between evil of the first, and evil of the second order. 2. What is imaginary evil? 3. Enumerate the aggravations of evil of the first order derived from the circumstances of the offence. 4. Enumerate (a) the aggravations and (b) the extenuations of alarm derived from the circumstances of the offender's character.

III.—1. State and explain the ordinary effect which a special position of the offender, affording facility for the commission of the offence, produces upon the resulting alarm. 2. Mention a signal exception to the ordinary rule.

IV.—1. State the doctrine of Bentham as to

the alleged error of calling motives good or bad. 2. Distinguish between motives, (a) social; (b) semi-social; (c) anti-social; (d) personal.

V.—1. To what kind of offences are preventive means especially applicable? 2. For what reason ought larger discretion to be intrusted to the executive power in the application of suppressive than of preventive means?

VI.—1. To what kind of offences is satisfaction applicable? 2. What ought to be the measure of pecuniary satisfaction?

VII.—1. Explain the causes of the introduction of duelling, and the defects of duelling as a penal remedy. 2. Mention the modes of honorary reparation proposed by Bentham.

VIII.—1. Class the cases where punishment ought not to be inflicted. 2. Enumerate the evils of all penal laws. 3. Distinguish between the cases in which lapse of time ought, and those in which it ought not, to be a bar to punishment.

IX.—1. Describe the evils resulting from punishments which involve innocent persons, and, 2. give examples of the most common cases of the voluntary infliction of such misplaced punishments.

X.—1. Enumerate the principal useful qualities which should determine a legislator in his choice of punishment. 2. With reference to such qualities, explain the defects and advantages of (a) capital punishment; (b) transportation; (c) imprisonment; (d) pecuniary penalties.

XI.—1. State the imperfections of direct penal legislation, and, 2. the three main principles of indirect legislation for the purpose of preventing offences.

XII.—Explain the probable effects of the general and indiscriminate diffusion of knowledge upon the quantity and quality of offences.

XIII.—Enumerate the principal indirect modes of so influencing the will as to prevent offences.

XIV.—Enumerate the precautions to be taken for the purpose of preventing abuse of authority.

We shall take an early opportunity of noticing the excellent address of Mr. Serjt. Telford on the occasion of the distribution of prizes and certificates of honour, at the University College, London. The names of the successful candidates shall also be recorded.

LAW OF ATTORNEYS.

PRODUCTION OF PAPERS.—LIEN.

Where under the 56th order of 1828, the prosecution of a decree in a creditor's suit is taken from the plaintiff and committed to another creditor, the plaintiff's solicitor in such case must permit the other creditors' solicitor to inspect and take copies of the papers.

In this case the plaintiff's solicitor had failed to prosecute the decree with due diligence. The master, under the 56th order of 1828,

committed the prosecution of the suit to another creditor. A motion was made on behalf of that creditor, that the solicitor of the plaintiff might be ordered to allow the solicitor of the substituted creditor, at all reasonable times, and upon giving reasonable notice, to inspect and take copies of, and extracts from, the several drafts, briefs, decree, orders, letters, copies of letters, documents, and papers relating to, or made in the cause, in his possession. The motion was supported by an affidavit, stating that applications had been made by or on behalf of the party making the motion, to the plaintiff's solicitor for information as to the state of the proceedings, and for liberty to inspect the documents, which had been refused.

The Vice Chancellor of England.—I have already decided, in *Heslop v. Micalfe*, 8 Sim. 622, (and my decision has been affirmed by the Lord Chancellor) that, where the solicitor of a plaintiff refuses improperly to proceed with the suit on behalf of his client, he cannot withhold the papers in the cause from his client's new solicitor, but ought to deliver them up, so as to enable the new solicitor to proceed with the suit; without prejudice, however, to his own lien for costs. The question then is, whether there is any substantial difference between the case of a solicitor who has discharged himself, and that of the solicitor of a plaintiff, who, by his own course of conduct induces the Court to take from him the prosecution of the suit, and to commit it to another party, who employs another solicitor. The Master must be deemed to have exercised a sound discretion in making the order to which effect is now sought to be given, his decision having been acquiesced in. The principle of *Heslop v. Micalfe*, which is substantially the same case as the present, is, that the solicitor who has possession of the documents in the cause, holds them for the benefit of the plaintiff; and where, by reason of the plaintiff's default in prosecuting the decree in the cause, the prosecution of it has been committed to another party, the solicitor ought not to be permitted to increase the expences of the suit, by compelling that party to take *de novo* office copies of the proceedings which have taken place in it. I shall, therefore, make an order in the terms of the notice of motion. The costs of the party applying must be costs in the cause; but I shall give no costs to the solicitor against whom the application is made. *Bennett v. Baster*, 10 Sim. 417.

COSTS.

Where documents, which a defendant is ordered to produce, are permitted to remain in his solicitor's office for the plaintiff's inspection, the solicitor is not entitled to charge the plaintiff for inspecting them.

This point was lately decided by the *Vice Chancellor of England*, who held that such charge could not be allowed, although the

clerk in court, if the documents had been deposited with him, would have been entitled to charge 6s. 8d. per hour for the inspection. His Honor said it was for the accommodation of the defendant that the documents were allowed to be inspected at his solicitor's office. *Woodroffe v. Daniel*, 10 Sim. 126.

LAW OF LIBEL.

WHAT IS DEEMED A PUBLICATION.

THE Criminal Law Commissioners, reporting on this subject, observe that,

“When the simple rules as to libel were first established, that is, when printing was yet unknown, when few could read and fewer still could write, the offence of publishing a libel was of rare occurrence. The vastness of the change which a different state of education and society have wrought in this respect may be in some measure estimated by the consideration that there are few, if any, of the higher or middle classes of life who are not, in legal strictness, amenable for transgressions of these rules. Every one who delivers to another any book, magazine, or newspaper, containing any libellous matter is, in point of law, guilty of an illegal publication. The libraries of the Universities and of numerous persons of literary attainments usually contain many books, ancient as well as modern, of a very libellous description. It is true that many reasons may be urged for allowing books or engravings to be contained in such depositories for the purposes of study, or of literary or scientific research, although much mischief might result to religion or morals from their more public exhibition. The law, however, knows no such distinction, but subjects all who are concerned in the publication of the same illegal matter to the same penalties. A law which thus includes within its scope the subjects of the realm by thousands, which would, if rigidly enforced, consign to the flames and subsequent oblivion many works, ancient as well as modern, which not unfrequently find a place in distinguished libraries, would, if so enforced, be scarcely tolerable. The reason why so indiscriminate a law is less oppressive than might have been expected seems simply to be this, that it is but rarely put in force. In stating this we of course confine the remark to the criminal branch of the law, for undoubtedly instances have occurred of civil proceedings of a very harassing nature, where successive actions have been brought against mere vendors of newspapers in respect of the very same personal libel. But as regards civil actions such practices receive a considerable check from the provision which may prevent even a successful plaintiff from obtaining costs where the damages recovered do not amount to 40s. In respect of the criminal proceeding there is still less temptation to prosecute, inasmuch as the prosecutor can obtain no costs, and the fine, if one be imposed,

belongs to the Crown. Although less of inconvenience than might have been expected thus results from the operation of so very extensive a law, it is one which sometimes bears harshly upon booksellers. It has generally been considered that the sale of a book in a bookseller's shop, although it be by an agent in the ordinary course of dealing, is *prima facie* evidence of a sale by his authority and of his knowledge of the contents of the book, and consequently of an illegal publication where the contents are libellous. This may, in many instances, be productive of hardship. In the case of a very extensive dealer, or in the ordinary case of an auctioneer who sells a library, it may be harsh to infer a knowledge of the contents or even character of every book that he sells for the purpose of founding upon it an inference of guilt. It is the less easy to suggest any remedy against hardship in such cases, inasmuch as it does not arise from any peculiar severity of the law specially aimed against persons so situated, but from an application of the ordinary rules of evidence which cannot be avoided without the risk of incurring an opposite inconvenience. As a general rule an agent employed to conduct the business of the principal may be presumed to act by his authority, so long as he acts within the apparent scope of his duty—a contrary rule, or one which required express proof of authority in respect of each distinct act of dealing would be, in a great measure, to exempt such a principal from liability for the acts of his agent, and would be sufficient to afford almost entire impunity to a principal dealer in libels. It seems to us that it might be desirable, in cases where a principal was indicted in respect of the sale of a book by an agent, that the penalty should be small, unless knowledge of the contents of the libel were expressly proved. Whilst it seems to be harsh and unreasonable on the one hand to make even a *prima facie* presumption that every bookseller, however great the number of his agents, is acquainted with the contents of every book sold or disposed of in the ordinary course of trade; it is, on the other hand, but reasonable that those through whom noxious works are dispersed, and without the aid of whose exertions and capital offensive works could not be extensively circulated, should be required to use due caution to prevent injury to the public.

"There is no doubt a difference, in point of morals, between the deliberate publication of a pernicious book, and a mere want of due caution in not exercising that degree of vigilance which might have prevented the sale of such a book, to the detriment of society. It is not, however, very material whether morals are depraved intentionally or through negligence in such cases. And in reference to the ordinary principles of criminal jurisprudence, it is difficult to distinguish between an injury wilfully inflicted, and one occasioned by culpable negligence. We do not, therefore, conceive that it would be expedient, were it even practicable, to found any distinct pro-

vision simply against culpable negligence on the part of booksellers. But in case of the sale of a libellous work after express notice, or in case of actual knowledge of the illegal nature of the book published, we think that the punishment might reasonably be extended, as the offence in such case undoubtedly derives an aggravation from the responsible situation of the defendant as regards the public.

"We find that, amongst other provisions contained in a Bill, entitled 'A Bill to alter and amend the laws respecting libels,' ordered by the House of Commons to be printed, 29th March, 1833, is the following:—'And whereas doubts have been entertained as to the liability to criminal prosecution of proprietors, printers, and publishers of newspapers, books, and other publications in certain cases: be it further enacted, that any criminal prosecution for libel against any proprietor, printer, or publisher of any newspaper, book, or other publication containing any libel, it shall be competent to such proprietor, printer, or publisher, to give in evidence, on the trial of the indictment, that at the time of the publication of such libel, and previous thereto, he was incapable of participating in, or controlling, or was not cognizant of the writing, printing, or publishing thereof; and if it shall appear upon such evidence, to the satisfaction of a jury, that such proprietor, printer, or publisher was, at the time of the publication of such libel, and previous thereto, incapable of participating in, or controlling, or was not cognizant of the writing, printing, or publishing of such libel, the jury may return a verdict of "not guilty" as against such proprietor, printer, or publisher.' And in another proposed Bill, entitled 'A Bill to secure the liberty of the press,' and ordered by the House of Commons to be printed, 2d March, 1837, it was (by clause 21) proposed to be enacted, 'That in any prosecution for a libel, whether public or personal, it shall be lawful for the defendant to give in evidence that such libel was made and published without his privity, consent, or knowledge, the better to enable the jury to decide whether or not, under all the circumstances of the case, the defendant be guilty.'

"It appears to us, as regards the latter proposed enactment, and also so much of the former as relates to the power of giving the matters suggested in evidence on the part of a defendant, that the only possible objection is, that where a principal is sought to be charged by proof of sale by an agent, such evidence is admissible by the present law, for such evidence against the principal is but matter of presumption for the consideration of the jury, and as such is liable to be rebutted by any evidence whatsoever which tends to negative that presumption; and with respect to the latter part of the former proposition, viz., that on such proof as there suggested having been given, the jury may return a verdict of not guilty. We also think that such a provision is unnecessary, inasmuch as under the existing law a jury would, we conceive, be warranted in finding a verdict for the defen-

dant, if they were convinced upon the evidence that he had neither directly authorized the illegal act, nor been guilty of culpable negligence in not preventing its being done by another. Should it be deemed proper, in order to take away the force of some former decisions on this point, which might seem to warrant a different conclusion, it would, we conceive, be proper to express the reason for a declaratory enactment, the object of which would simply be to allow a defendant, charged with having maliciously published a libel, to show that it was published by another without any blame attributable to himself, or, as the case may be, even against his will, and contrary to his express directions.

SELECTIONS FROM CORRESPONDENCE.

ABOLISHMENT OF IMPRISONMENT FOR DEBT.

Sir,

I had lately occasion to apply for an order to arrest a defendant who was going abroad. I entitled the affidavit in the Court in which the action was pending as well as in the cause. The affidavit was sworn before a commissioner in the country, who added the words "a commissioner, &c." immediately after his name at the foot of the jurat. My agents went before Mr. Justice *Wightman* for the order, when that judge refused to grant it, because the commissioner had omitted to state that he was a commissioner "for taking affidavits in the Exchequer at Westminster," in pursuance (as my agents understood) of a rule of Court made in Trinity Term last by Lord *Abinger*. I am an old subscriber to, and a constant reader of your valuable publication, and can bear testimony of your kindness in noticing many new rules of practice, but I have looked into the work in vain for the one alluded to. I was much annoyed at the circumstance, and if the defendant had left England on the day he intimated his intention of doing, I should not have been in time to secure him, and my client would have lost his money. I trouble you with this for the benefit of my professional brethren.

AN OLD SUBSCRIBER.

[Our Correspondent will find that we reported a case of *Tarte v. Barnett*, in our last volume, p. 319, in which this point was decided; but that decision has since been overruled by the case of *Birdkin v. Potter*, p. 109, ante, in which Mr. Baron *Parke* distinguishes the grounds of his decision from the former cases. There has been no rule of Court on the subject.—Ed.]

ABSENCE OF COUNSEL.

To the Editor of the *Legal Observer*.

Sir,

I fully approve of your observations on this subject, but I do not think you offer quite the proper remedy. You propose that counsel should restrict themselves to a particular court, and not to practice out of it. If they would do so, all would be well, but as they have not taken the same advice from the bench, we may suppose they will not alter their practice, unless something further be done. I cannot but think it is the duty of solicitors to their clients to induce the leading barristers to accede to some arrangement. The Law Society ought to take the matter up. Let a public meeting be called, and after proposing a resolution to the effect that it would be beneficial to the interests of the suitors, if counsel, above a certain standing at the bar, would restrict themselves to practising in one court, whether in Equity or Common Law; then by another resolution, the solicitors should pledge themselves to use their influence to persuade counsel to accede to the arrangement, and I trust that they would not resist an appeal, especially headed by a body of such weight and respectability as the Law Society.

A MEMBER OF THE LAW SOCIETY.

HILARY TERM EXAMINATION.

THE Examiners of persons applying to be admitted attorneys have appointed *Tuesday*, the 26th *January* next, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination, and it will commence at ten o'clock precisely.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the Judges in Easter Term, 1836, must be left with the Secretary on or before *Munday*, the 17th *January*.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally; but the articles must be left within the first seven days of term, and answers up to that time.

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—
1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity, and Practice of the Court. 5. Bankruptcy, and Practice of the Courts. 6. Criminal Law, and Proceedings before Justices of the Peace.

Each candidate is required to answer *all* the preliminary questions (No. 1.); and it is expected that he should answer in *three* or more of the other heads of inquiry,—*Common Law* and *Equity* being two thereof.

SOLICITORS TO BE ADMITTED IN CHANCERY,
On the Day after Hilary Term, 1842.

Clerk's Name and Residence.

William Ablett, 23, Bayham Terrace, Camden Town.

Ernest Rossiter, Newbury, Berks.

Richard Stockley, Trinity Terrace; and Saint Andrew's Road, Southwark.

To whom articulated, assigned, &c.

George Trulyhitt, Cook's Court; assigned to John Bell, Vine Street; assigned to Alfred Goddard, King Street.

Broome Pinneger, Newbury.

Joseph Smith, Coleman Street; assigned to John Benjamin Smedley, New Inn; assigned to Edwin Smith, Bridge Street, Blackfriars; assigned to Charles Elmes Parker, Princes Street, Spitalfields.

SUPERIOR COURTS.**Lord Chancellor.****JOINT BANKRUPTCY.—JOINT DEBT.—JOINT SECURITY.—PROOF AGAINST SEPARATE ESTATES.**

Two partners, before their bankruptcy, gave mortgages to their creditor to secure payment of a partnership debt, and covenanted jointly and severally for the payment of the debt: Held, that the creditor has a right to prove the whole debt against the separate estates, and to receive dividends from them, without first realizing the joint security.

This was a special case from the Court of Review. It appeared that John Plummer and William Wilson, as co-partners, were indebted to George Joad, in 1829, and by a deed dated in that year, they assigned to him certain mortgages which they jointly held, on property in the West Indies, and they gave their joint and several covenant for payment of the sum then due, and of all other sums that Joad might advance to them, not exceeding the sum of 10,000*l.*; and in 1830, they assigned to Joad another mortgage which they jointly held upon other property, and gave a like covenant for payment of a like sum; soon after which they were duly declared bankrupts, being then indebted to Joad in the sum of 20,000*l.* altogether. He went before the commissioners, and offered to prove that debt, claiming to go against the separate estate of each of the bankrupts, without giving up or realizing the joint securities. The majority of the commissioners refused to admit the proof without first disposing of the securities, being of opinion that Joad was entitled to prove only the difference, if any should remain, between the proceeds of the mortgages and the debt, pursuant to the general order of March 1794. Joad petitioned the Court of Review, and that Court, consisting then of four Judges, was equally divided on the question, but by arrangement he was allowed to receive dividends on the 20,000*l.* The property comprised in the first deed of assignment has been since realized, and produced a much larger sum than the 10,000*l.* secured by it. The

assignees of the bankrupts petitioned the Court of Review for an order on Joad to refund the excess of dividends which he received on the whole debt. That Court, consisting of two Judges, was again divided in opinion, Sir G. Rose holding that Joad had a right to go for his whole debt against the separate estate of each of the bankrupts, still retaining his security. So that he did not receive altogether more than 20*s.* in the pound, while Sir John Cross held an opposite opinion.^a They agreed in granting a special case.

Mr. Russell and Mr. Bagshawe for the assignees.

Mr. Stannaton and Mr. Hall for Mr. Joad. Among the cases referred to in the argument were *Ex parte Parr*, 1 Rose, 76, and 18 Ves. 65; *Ex parte Peacock*, 2 Glyn & Jameson, 27; and *Ex parte Connell*, 3 Deacon, 201.

The Lord Chancellor, having taken time to consider the question, gave his reasons at length for coming to the conclusion that the creditor had a right to prove under the circumstances against the separate estates, without either surrendering or disposing of the securities. The joint estate and the separate estates of the bankrupts were quite different in the consideration of the bankrupt laws, and they were distinctly administered. So that in respect to the separate estates, the joint security was the same as a security given by a third person jointly with either of the bankrupts, and a creditor was not obliged to give up a security of that sort, but might retain it in case of a deficiency of the bankrupt's estate to produce to him 20*s.* in the pound. In *Ex parte Peacock* it was held that if a person has a joint debt due to him from two, and a security from one of them, he may prove against the joint estate, without giving up or disposing of the security. The present case is the converse of the case *Ex parte Peacock*. On application by counsel as to the costs, his Lordship having taken till next day to consider it, said, that in consequence of the difference of opinion between the commissioners, and twice between the judges of the Court of Review, both sides were justified in coming here, and therefore he would not make any order as to costs.

In *re Plummer and another*, Nov. 4th and Dec. 8th, 1841.

^a 1 Mont. Deac. & De G. 101.

Rolls.

LIABILITY OF AN EQUITABLE OWNER OF LEASE-
HOLD PREMISES FOR BREACHES OF COVE-
NANTS IN THE LEASE.

Where a lease has become the property of a party, as part of the stock of a partnership in which he was interested, and he afterwards receives rent for the property, and pays the ground rent; he is liable to any claim that may be made under the covenants in the lease for dilapidations or for holding over, although no actual assignment was ever executed to him. But the claim being in the nature of a simple contract debt, must be pursued within six years after the expiration of the lease.

The plaintiffs, as the representatives of their father, Samuel Saunders, claimed against the defendants as the assignees of certain leasehold premises, several sums of money, being partly for damages and costs incurred for dilapidations upon the premises, and partly for a claim made against the defendants for a breach of the covenants in a lease held by the defendants, which had been granted by the plaintiffs' father. The greater part of the premises were held by the plaintiff's father, as assignee of a lease granted by a Mr. Salway, and the remaining part he held in his own right, as copyholder of the manor of Stepney. In 1795, he granted a lease of the premises in question to John Oxley and Frederick Teuche, for thirty-four years, and they entered into the usual covenant for keeping the premises in repair. Oxley and Teuche carried on the business of vinegar makers upon the premises, and the lease granted to them formed part of their stock in trade. In April, 1798, they admitted Ferrard into partnership, and in 1803, Teuche retired, and Oxley and Ferrard took Green into partnership. In 1810, the defendant Benson joined the firm of Oxley, Ferrard, and Green, when the lease was valued and formed part of their stock. In 1816, Oxley died, but Benson, Green and Ferrard continued their partnership till January, 1820, when Green and Ferrard retired, and assigned their shares to Benson, who afterwards entered into an arrangement with Champion and Green. In June, 1828, the premises were much damaged by fire, when the agents of the plaintiffs called upon the defendant Benson to put them into proper repair, but no notice was taken of their application, and a man named Barton, having obtained possession, and instead of repairing began to pull down the premises. The plaintiffs in consequence filed their bill against Barton, and obtained an injunction to restrain him from committing further waste. The lease granted by the plaintiff's father, expired in June, 1830, but Barton refused to give up possession, and the plaintiffs then demanded possession of Benson, but he refused to interfere, and proceedings were adopted to recover possession, the costs of which amounted to 276*l*. Salway also, the superior landlord,

who granted the lease to Saunders, brought an action against the plaintiffs for damages for not performing the covenants in the lease, viz. not repairing, &c., and obtained a verdict for 763*l*., which with the costs amounted to 962*l*. The defendant Benson, having disputed his liability to repay the above mentioned sums, the plaintiffs filed their present bill for indemnity, and asked for a reference to the Master to ascertain the amount of the damage they had sustained.

Pemberton and L. Wigram for the plaintiffs, cited *Close v. Wilberforce*, 1 Beav. 112; *Moore v. Choat*, 8 Sim. 508; *Stackhouse v. Burnaston*, 10 Ves. 453.

Kindersley and Bacon, for the defendants, referred to *Lucas v. Comerford*, 3 Bro. 166; *Jenkins v. Portman*, 1 Keen, 435.

The Master of the Rolls, after stating the facts of the case said,—The legal interest in the underlease survived to Teuche, but the beneficial interest was enjoyed by the successive partners, and ultimately became vested in Benson. The plaintiffs, by their bill, allege that all the damage was done while Benson was equitable owner, or in possession of the premises, and they, therefore, contend that he was bound to keep the premises in proper repair, and to take care that possession was delivered up at the end of the term, and that his neglect to perform his duty having caused the loss and expenses which have been incurred, he is liable to pay the amount of them to the plaintiffs. The defendant Benson admits that he had an interest jointly with his partners, but he contends, that never having executed the lease or any assignment, he is not liable; and he further contends, that if he were ever liable, the plaintiff's remedy is lost by the lapse of time.

Under the provisions of the agreement of 1810, and the arrangements between Benson and the other parties, I am of opinion that Benson took a beneficial interest in the premises, and that having that beneficial interest, he became liable to the burthens attached to them; but he, never having executed the lease, nothing in the shape of a covenant can be established against him; the remedy of the plaintiffs cannot be put higher than simple contract. Now the lease expired in 1830, and the bill was not filed until 1838; and although the expenses were not incurred till some time after, the remedy accrued on the expiration of the lease. The plaintiffs, therefore, not having pursued their remedy within the time allowed by law, their bill must be dismissed, but as the defendants set up a wrong defence in contending that Benson had no beneficial interest, the dismissal must be without costs.

Saunders v. Benson, April 27th and Nov. 13th, 1841;

Vice Chancellor Knight Bruce.

INFANT.—GUARDIAN.—EDUCATION.

Where a Catholic testamentary guardian, enjoined by the testator to educate his child in the Roman Catholic faith, allows the infant to be brought up in the Protestant religion until the age of fifteen, a Court of Equity will, upon the petition, and after a personal examination of such infant as to his religious opinions, decree that he should continue to receive Protestant instruction, and be sent to a Protestant seminary.

This was a petition of an infant by his next friend, praying that it might be referred to the Master to inquire and state of what particulars his fortune consisted, and what would be proper for his maintenance and education, and to whom the same ought to be paid, and that it might be referred to the Master to settle and approve of a proper scheme for his education, and as to where he should be placed, and where he should pass his vacations.

The facts were briefly as follows:—William Witty, the father of the infant, died in the year 1827, leaving one child, the petitioner. By his will he appointed his wife, his brother, and Robert Henry Anderson, a Roman Catholic solicitor of York, the guardians of his children, for the purpose of bringing them up Roman Catholics. The only property which the infant was entitled to under his father's will was 65*l*. Upon the testator's death the infant remained with the mother (who afterwards married a Mr. Sherwood) until the period of her decease, in 1831. In 1831 he found an asylum in the family of a Mrs. Conyers, a Catholic lady, where he remained, with the full concurrence of Mr. Anderson, the sole surviving testamentary guardian, until the year 1834, when she also died. During this latter period he was brought up a strict Roman Catholic. And when upon her death-bed, Mrs. Conyers exacted a solemn pledge from Mr. Dickon, the maternal grandfather of the infant, that, in case he took charge of the youth, he would allow him to be brought up a Roman Catholic. This Mr. Dickon, who was a Protestant, assented to. From 1834 till April 1841, the infant remained with Mr. Dickon; and upon his death, the infant became entitled under his will to 2000*l*. There was also another sum of 300*l*., which he received from his step-father, Mr. Sherwood. The main question for the consideration of the Court was in which religion the infant, who was now 15½, should be brought up. Mr. Anderson, as sole surviving testamentary guardian, having objected to his being placed at a Protestant school.

Mr. Swanton, Mr. Cole, and Mr. Smythe appeared on the part of the infant and Mrs. Marshall; and

Mr. Spence, Mr. Russell, and Mr. Dearsly, for Mr. Anderson.

Counsel concurred in expressing a wish that his Honor would see the youth, and ascertain personally from him what his inclinations were on the subject of his religious faith.

His Honor said, if the infant had a legal guardian, it was not suggested that any other person than Mr. Anderson filled that character; the infant's surviving parent, and who was one of his guardians, appeared to have died while he was under six years of age. As to Mr. Anderson, he never appeared till this year to have interested himself in the care or education of the infant; and the will, so far as related to the guardianship, appeared in a great degree, from 1831 to the death of Mr. Dickon, to have been practically a dead letter. Nevertheless, such rights and powers which belonged to the legal guardianship might yet be exercised by Mr. Anderson. If he was still the legal guardian, there was no reason to suppose he had deprived himself of his legal rights and powers. In a case, however, in which for a long course of years the infant's education had devolved upon others, without the interference of the legal guardian, it was impossible to say there were not grounds for a reference, especially where it appeared that the person of the infant was not in the guardian's care. All parties, his Honor believed, had been guided by the best of motives. It appeared that the father of the infant was a Roman Catholic. Not only so, but by his will he had left strict injunctions that his son should be educated in his own religion. It appeared to his Honor, therefore, that it was the duty of all who had the care of the infant to cause him to be brought up in his father's faith. He was of opinion, that however well intentioned the parties might be, the non-compliance with the father's injunctions was a breach of duty both towards the father and the infant himself. His Honor could well understand the motives of Mr. Anderson in not having come forward at an earlier period; he might have thought that his doing so might possibly have interfered with the infant's temporal prospects. The relations of the mother might have brought up the infant in the religion of his father consistently with kind care and attention, and consistently with his residence in a Protestant family. This, however, was not done, and the infant was allowed to arrive at an important period of his life under Protestant impressions. With every respect, therefore, for what might be allowed to the feelings and wishes of the father, upon so important a subject, it was impossible not to see that great danger to the spiritual welfare, and to the temporal character of the infant, might arise (he did not say would arise), from a change of religious education. On that ground, and that ground alone, it was the duty of the Court to pause. Circumstances might arise which might render a different course of proceeding necessary. Regularly, and his Honor thought more beneficially, these matters were sent to the Master's office. His Honor could not help, however, seeing that probably the matter would ultimately be brought back to the Court, whatever might be the opinion of the Master. He could not help looking at the small amount of the infant's property, and was desirous, if possible, to save the expense of a discussion before the Master;

and, therefore, as he understood that it was the wish of all parties that he should see and converse with the infant, he thought he should do it with this view—namely, for the purpose of stating, for the information of the Master, but not necessarily for his guidance, the impression which had been made on the Court (if any should be made) as to the proper course to be taken with reference to the religious education of the infant.

Upon a subsequent day, his *Honor* desired the different counsel to attend his private room, and finding all parties desirous to avoid a reference to the Master, he decreed as follows.—

His *Honor* having stated to counsel that unless they would unequivocally agree to be bound by his decision he should direct a reference to the Master; and counsel, after due deliberation, agreeing to be so bound, with a view of saving expense to the infant's estate, his *Honor* directed the Registrar of the Court to take down a minute in his book that the Court, with consent of all parties, disposes of the application without a reference to the Master.

His *Honor* then said that there had been a forgetfulness of duty on all sides, in not having brought up the infant in the Catholic faith, according to the injunctions in the testator's will; but retrospect was now useless: the boy had been constantly and uniformly, since 1834, brought up a Protestant, without the interference of the guardian or maternal relative to instruct him in the Roman Catholic faith; consequently he had imbibed Protestant notions: he had conversed with the child, who had shewn a capacity of thought and reflection, and displayed a serious turn of mind, and had expressed to him an earnest desire to be brought up a Protestant; that he answered some questions put to him as to the difference of the two faiths, and he shewed that he understood to a certain extent the broad differences between them. His *Honor* said he was therefore of opinion, and the circumstances compelled him to that decision, that the boy must be continued to be brought up a Protestant. His *Honor* then dictated the terms of the order to the Registrar.

Witty v. Marshall, M. T. 1841.

Vice Chancellor Wigram.

CONSTRUCTION OF WILL.—LEGACY.—CONTINGENCY.

The words "when or if," certain legateses shall attain twenty-one, held to constitute a vested legacy, reference being had to the context of testator's will.

A testator bequeathed four legacies in the following words: "I give and bequeath to my four reputed children, 1000*l.* currency of the Isle of St. Kitts, to be paid to them respectively, *when, or if* they shall attain twenty-one, and in the interim, during their respective lives, the last four-mentioned legacies shall be put to interest;" the interest was made payable

to their mother, for their support and education. He afterwards gave to the four legateses houses and lands, which were to be under the direction and management of their mother, for their use and benefit, or the survivor of them, until they should attain twenty-one. He then gave his household stuff, apparel, &c., and the residue of his estate equally to be divided, share and share alike, among the said four legateses. One of the children having died under twenty-one, letters of administration having been taken out by the nominee of the crown, the question was whether this was a vested or only a contingent legacy.

Mr. *Wray* contended for the former construction; Mr. *Temple, contra*, argued for the latter, on behalf of the residuary legateses.

His *Honor*, in giving judgment, said, I thought it right to reserve my judgment upon this petition, not from any doubt I entertained at the close of the argument, but because I had understood that this case having in another stage been before the Vice Chancellor of England on further directions, he had expressed an opinion favorable to the respondent's case. It is clear, however, that the whole case now before me could not have been judicially under the view of the Court. The utmost it can have done then must have been so to have expressed itself as not to prejudice the case. I am clearly of opinion that this is a vested legacy. A legacy to A., payable "when he attains twenty-one" would clearly be a vested legacy. (1 Roper, 479.) A legacy to A, payable "at twenty-one, if, or in case he attains that age," will, I conceive, be a contingent legacy merely. (*Knight v. Cameron*, 14 Ves. 381.) A legacy to A. when he attains twenty-one, or if he does, would also be contingent. (*Hanson v. Graham*, 6 Ves. 239.) But in each of those cases a strict construction will yield to a different intention appearing on the face of the will. Having this distinction in my mind, I should be sorry if I were obliged to decide this case upon the effect to be given to the words "when or if," in this will. I am glad to be relieved from the necessity of so doing, because it is abundantly clear that words which, abstractedly considered, import a condition, may receive a different construction when their context shows that they were not meant to be so construed. His *Honor* also referred to *Bramston v. Williamson*, 7 Ves. 421. *Sanders v. Riley*, decided by Lord Cottenham recently, and *Vanodry v. Geddes*, 1 Russ. & Myl. 208.

Lister v. Bradley, November 9, 1841.

Queen's Bench.

[Before the four Judges.]

COSTS.—REAL AND NOMINAL PARTY.

The Court will not, after verdict and judgment in an action of trespass, interfere to compel a person who is not a party to the record, to pay costs upon affidavits which shew that he is the real party interested, and that the party on the record is a merely

nominal party to the suit. There should have been in the first instance an application for security for costs. This kind of interference is confined to cases of ejectment.

The Solicitor General, Mr. J. Evans, and Mr. V. Williams, shewed cause against a rule, calling on Mr. C. H. Leigh to pay the costs of this cause, in which a verdict had been given for the defendant. The affidavits in support of the application set forth that this was an action of trespass; that the real question in the cause related to the right of Mr. Leigh or of Sir C. Morgan to the possession of certain land in the county of Brecon; that Evans was the tenant of Mr. Leigh, and was merely a nominal party, as he happened to be the tenant in possession of the land which was the subject of the alleged trespass; and that the person really interested in the case was Mr. Leigh himself. In answer to these statements the affidavits on the other side disclosed a conversation between the attorneys before the cause came on for trial, in which Evans' attorney, observing to Rees' attorney that these two parties were merely the tenants of the gentleman, the limits of whose property were really in dispute, proposed that the two attorneys should, in the respective names of Mr. Leigh and Sir C. Morgan, enter into an undertaking to pay the costs which might become due on either side, but that the attorney for Rees on this record, who was also the attorney for Sir C. Morgan, refused to agree to this proposition. On the facts, therefore, there was an answer to the application; but in law also it was incapable of being maintained. *Doe d. Masters v. Gray*,^a would be cited in favour of this application, but it was not in point, because there the action was in ejectment, where it was often the case that the nominal party to the record was defending on another's title. But *Hayward v. Giffard* and *Grove*^b was directly in point, and the whole question was there discussed; and the Court of Exchequer distinctly laid down the rule that that Court would not interfere to make a person who was not a party to the record pay the costs of the action, though he was the real party interested in the event. In giving judgment in this case Lord Abinger said, "The authority of the Courts at Westminster is derived from the Queen's writs, directing them to take cognizance of the suits mentioned in the writs respectively, and thus bringing the parties before them. This being so, they have no power to order any particular individual to come before them at their pleasure. We cannot make an order against any individual who is not a party to any suit before us. The cases where the Courts have interfered in this way are cases of exception. They are cases where application is made for security for costs, where the immediate thing commanded is a stay of proceedings, by which means the ulterior object of getting security for costs is obtained. The general

rule is, that Courts have no such power except over parties to the record." That case must govern the present. This application is too late: the defendant might have applied for security for costs, and then the Court could have examined into all the circumstances of the case, and might have made such order as they seemed to require.

The Attorney General and Mr. Chilton, in support of the rule, insisted that nothing which had occurred between the two attorneys here, could affect the right to maintain this application. The question then was, whether a party really interested in a suit could not be made to pay the costs of it. *Hayward v. Giffard* was not decisive of the negative of that question. Here it was not denied that the two parties on the record were merely nominal parties, nor that the real interest in the cause was in the two gentlemen who had been mentioned. Those gentlemen, therefore, ought respectively to bear the costs of a case which was contested for their benefit. *Blewitt v. Tregonning*,^c shewed that where the circumstances stated in the affidavits were sufficient, the Court would grant a rule like the present. *Doe d. Masters v. Gray*, was in point, and so was *Thrustout d. Jones v. Shenton*,^d where the landlord was made to pay the costs. In *Doe d. Wright v. Smith*,^e an application like this was refused, but that was because the party against whom the application was made had no interest in the property. If he had had an interest in it, he would have been made to pay the costs.

Mr. Justice Williams—I have not the least doubt that there might have been a remedy in an earlier stage of this cause, had an application for that purpose been made to this Court. But the application now made is one which it is against the settled practice of the Courts to grant. *Hayward v. Giffard* is directly in point, and must decide the present case.

Mr. Justice Coleridge.—I am entirely of the same opinion. The distinction between the present case and that of *Doe d. Masters v. Gray*,^f is perfectly clear. *Blewitt v. Tregonning*,^g is also in point against this application. There my brother Littlehale shewed a disposition to interfere, if he could have done so according to the rules of law, but he could not; and if that case is quoted in proof of any thing else, then I must say that I think its authority must be considered doubtful. The rule, therefore, may be considered to be well established, that in all other actions, except those of ejectment, the Courts have disclaimed having any direct authority over any but persons who are parties to the record. This application might have had a different result, had the parties come in the first instance asking us to call on the plaintiff to give security for costs. We might then have adopted the course described by Lord Abinger in *Hayward v. Giffard*, but it is now too late to take such a course.

^a 5 Dowl. P. C. 404.

^d 10 Barn. & C. 110.

^e 8 Dowl. C. P. 517.

^f 10 Barn. & C. 615.

^g 5 Dowl. P. C. 404.

^a 10 Barn. & Cres. 615.

^b 4 Mee. & W. 194; 6 Dowl. P. C. 699.

Mr. Justice *Wightman*.—No cases have been cited in support of this application, but those, which being cases of ejectment, are exceptions to the rule rather than instances of it. *Blewitt v. Tregonning* has been referred to as shewing that had the circumstances there warranted the interference, Mr. Justice *Littledeale* would have granted a rule of this sort. But had the decision there been in favour of the application, it could not have stood against the case of *Hayward v. Gifford*, which was considered with great care by the Court of Exchequer. The party in a case like this is not without a remedy if he comes in time, for he may apply to stay proceedings till security is given for costs.

Rule discharged.—*Evans v. Ross*, M. T. 1841. Q. B. F. J.

Queen's Bench Practice Court.

JUDGMENT AS IN CASE OF A NONSUIT.—INSOLVENT,

If a defendant has become insolvent since the joinder of issue, and put the debt in question in his schedule, it is a sufficient ground for not proceeding to trial, according to the practice of the Court; and if a rule for judgment as in case of a nonsuit has been obtained, the Court will discharge it with costs.

C. Rowe shewed cause against a rule *nisi* for judgment as in case of a nonsuit obtained by *Wilson*. The affidavit, in answer, stated that since issue was joined, the defendant had become insolvent, had put the plaintiff's claim into his schedule, and subsequently been discharged under the act. These were sufficient reasons, it was submitted, for not proceeding to trial according to the practice of the Court.

Wilson supported the rule.

Patteson, J.—I think that after the defendant has put the plaintiff's debt into his schedule, and taken the benefit of the Insolvent Act in respect of it, it is too much for him to come to the Court, and obtain a rule for judgment as in case of a nonsuit. The present rule must be discharged with costs.

Rule discharged with costs.—*Grey v. Brett*, M. T. 1841. Q. B. P. C.

ARTICLED CLERK.—LOSS OF ARTICLES.— CERTIFICATE OF ENROLMENT.

An attorney, to whom an articulated clerk had served the usual period of five years, had the articles deposited with him, and subsequently absconded. The Court afterwards advised the clerk without the production of the articles, on production of an affidavit of the search to find the articles being unsuccessful, and a certificate of enrolment.

In this case, a clerk named *Nicholls*, had been articulated in the usual manner for a period of five years, to a person named *Wigley*. This period he served, and at the expiration of it, he continued in the service of *Wigley*. The articles remained in the hands of *Wigley*.

Subsequently, the latter became embarrassed in his circumstances, and found it necessary to abscond from the country. On application to his wife, the articles could not be found. Search had been made among the papers he had left, but equally without effect. Mr. *Nicholls* was now desirous of being admitted, but without the production of the articles.

Ballantine moved for his admission accordingly, and produced a certificate of enrolment.

Patteson, J., thought that on this state of facts, the admission might take place, without the production of the articles.

Rule made accordingly.—*Ex parte Nicholls*, M. T. 1841. Q. B. P. C.

SERVICE OF RULE TO COMPUTE.—HOTEL-KEEPER.

An affidavit of service of a rule to compute, was stated to have been effected on a hotel keeper, at whose house the defendant and his family were residing, and the Court held it sufficient.

In this case, an action having been brought on a bill of exchange, the defendant suffered judgment by default. A rule *nisi* for referring it to the Master to compute principal and interest was obtained, and for the purpose of serving it, a clerk of the plaintiff's attorney proceeded to the Toy Hotel, at Hampton Court. There he discovered that the defendant was residing with his family. He was from home, and the clerk accordingly served the landlord of the hotel with the rule for the defendant.

Power now moved, on an affidavit stating these facts, to make the rule absolute. It was submitted that this must be considered as a sufficient service of such a rule. The landlord was in the situation of a servant to the defendant, and a service on a servant was sufficient.

Puttanen, J., was of opinion that the service was sufficient, and accordingly granted the rule absolute.

Rule absolute.—*Gosling v. Best*, M. T. 1841. Q. B. P. C.

Common Pleas.

ENTERING UP JUDGMENT UPON AN OLD WARRANT OF ATTORNEY.—AFFIDAVIT OF ATTESTING WITNESS.

Upon a motion for leave to enter up judgment, upon an old warrant of attorney, the affidavit of the attesting witness was dispensed with, it being sworn that he had been unsuccessfully sought at the residence of which he was described in the attestation, and that the defendant had acknowledged his own liability, and also the hand writing of the attestation.

Mr. Serjt. *Shee* moved for leave to enter up judgment upon an old warrant of attorney. The defendant had been seen alive on the 15th November, (the application being made on the 19th), but a difficulty arose by reason of the plaintiff having been unable to procure the usual affidavit of the attesting witness. It

was sworn that an unsuccessful search had been made for the witness, at the residence of which he was described in the attestation, and inquiries had been made of his father and sister without effect. The defendant, however, it was also sworn, had acknowledged his own liability, and had acknowledged that the attestation was in the hand writing of the witness. The cases of *Laing v. Kaine*, 2 B & P. 85; and *Young v. Showler*, 2 Dowl. P. C. 556; were relied on as authorizing the Court, under these circumstances, to grant the application.

Tindal, C. J.—I think the facts stated are sufficient to dispense with the affidavit of the attesting witness.

Rule granted.—*Read v. Forde*, M. T. 1841. C. P.

JUDGMENT AGAINST THE CASUAL EJECTOR.— LANDLORD AND TENANT.—AFFIDAVIT OF NO SUFFICIENT DISTRESS.

Upon an application for judgment against the casual ejector, in an action of ejectment under the stat. 4 Geo. 2, c. 28, an affidavit under sec. 2, made by the landlord, who swore "that he had been informed, and verily believed, that there was no sufficient distress on the premises," was held insufficient.

Mr. Serjt. *Andrews* moved for judgment against the casual ejector. It was an action of ejectment, brought under the provisions of the 4 Geo. 2, c. 28; sec. 2 of which act, provided, that in all cases between landlord and tenant, when half a year's rent is in arrear, and the landlord has the right of re-entry, a declaration in ejectment may be served, and possession of the demised premises recovered, provided no sufficient distress is to be found on the premises to countervail the arrears of rent. There was no tenant in possession of the premises, and the declaration had been served, by affixing the same on the outer door of the house; the landlord swore, "that he had been informed and verily believed, that there was no sufficient distress on the premises."

Per Curiam.—The affidavit is insufficient. We must have better proof of there being no sufficient distress, for the landlord may be in a distant part of the country, and may know nothing about it. Let the person who gave him the information make an affidavit.

Rule refused.—*Due d. Hicks v. Roe*, M. T. 1841. C. P.

THE EDITOR'S LETTER BOX.

S. P. R. inquires whether, in order to bind lands in a register county, by judgment, it is necessary that such judgment should be registered at the registrar's office in such register county, as well as with the senior master of the Court of Common Pleas, or whether the registry with the senior master alone will be sufficient?

C. B. states, in answer to "A Constant Reader," that it is not essential to the validity of a deed that it should be dated, for when no date is inserted, the time will be reckoned from the delivery of the same. 2 Raym. 1076.

We suppose that F. F., an attorney in practice in the country, in order to take a degree in law at the London University, must reside for some time in town; and that after taking the degree of B.L., he may in due season, take that of LL.D.

We think that A. B., having served four years of his articles in the country, then six months to a conveyancer in London, and then returns into the country for three months, after which time he is assigned to a common law agent in town, need not serve the three months passed in the country over again, provided he served with the person to whom he was first articulated.

The letters of C. C. C.; C. B.; "A Subscriber;" and M. M., have been received.

We shall probably find room for some letters on legal prizes or distinctions, in our next Number.

"Viator" wishes to know who, in case of difference among the passengers, has the controul of the windows in a public conveyance, that is, with respect to closing and opening them.

A solicitor informs us, regarding the case of *Rundell* (not *Runball*) v. *Lord Rivers*, reported p. 104, *ante*, that he was in Court when the *Lord Chancellor* gave judgment, and that the report of the Master was, that in the case of bond debts, it was only necessary to have an affidavit of the due execution of the bond; and the *Lord Chancellor* decided that in ordinary cases the proof of a bond debt in the Masters' office was sufficient, if the execution of the bond were verified by the subscribing witness; but if suspicion were thrown upon the consideration, then it became the duty of the person tendering the claim to substantiate the consideration on which the bond was founded. Messrs. Fladgate & Co., and Messrs. Wilde & Co., were the solicitors engaged in the case.

The suggestion of J. B. shall be attended to. Can he assist us with any materials for the memoir?

We are sorry that H. H. and his friends are disappointed at the delay in publishing his letter. We accommodate our correspondents as much as possible, and before next term hope to clear off our arrears.

"A Solicitor of the High Court of Chancery;" "Inquirer;" and H. V. C., shall be attended to.

We think our Bristol correspondent must proceed against the attorney who employed him. The case, however, may depend on the terms of the letter of instructions.

Our worthy correspondent, who so good-humouredly defends the Attorneys' Certificate Duty, shall have justice done to his labours as early as possible.

The Legal Observer.

SATURDAY, DECEMBER 25, 1841.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE IMPROVEMENT OF THE COPYHOLD TENURE.

OUR readers are well aware that the Copyhold Act, 4 & 5 W. 4, c. 35, (printed 22 L. O. p. 129,) established a commission for the purpose of facilitating the enfranchisement of copyholds, and if the parties preferred it, of commuting some of the most burdensome enactments of the tenure—heriots and arbitrary fines, leaving the tenure untouched. To this measure, as a step towards a most complete and extensive one, we have all along been friendly; but there is one feature of the act, to which we now wish to advert, other than that which relates to commutation and enfranchisement (already fully considered), because several of the clauses relating to it, come into operation on the 31st of the present month. The act is not only intitled an act “for the commutation of certain manorial rights,” and “for facilitating the enfranchisement” of copyholds, but is also “for the improvement of such tenure;” and it is to this portion of the act that we wish now to call the attention of our readers.

The first of the clauses to which we allude is the 85th, by which courts of equity may decree a partition of lands of copyhold or customary tenure. This disposes of a doubt which arose in the recent case of *Horncastle v. Charlesworth*, 10 Law Journal, p. 35, N. S., in which Sir L. Shadwell, V. C., held that a court of equity had not the jurisdiction to decree a partition. The correctness of this judgment has been much questioned, and there are certainly conflicting opinions, but the 85th section puts an end to all doubt on the point.

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This section is already in force, but by s. 86, lords of manors, or their stewards, may, after the 31st of December, 1841, hold customary courts, although no copyhold tenant be present. By the law now in force, the presence of two homagers is essential to the legal character of a customary court, although acts which could be performed by the lord or steward “without the form and machinery” of a court, would not be invalidated by being performed at a court rendered void by the presence of one copyhold tenant only, or by being held out of the manor. *Doe d. Leach v. Whittaker*, 5 Barn. & Ald. 409. But under this section a court would be good, although there should be no person tributary to the manor, in respect of lands of copyhold tenures, or only one of several copyhold tenants should attend. Scriven’s Copyhold Act, p. 98.

By s. 87, lords, or their stewards, may, after the 31st of December, 1841, make, out of the manor and out of court, grants of land held by copy of court roll; and by s. 88, lords, or their stewards, may, after the 31st of December, 1841, grant admissions out of the manors and out of court. These clauses will make an extensive alteration in the present practice of court keeping. As the law now stands, an admittance by the lord out of court, and even out of the manor is good. Co. Litt. 61 b.; *Melwick’s Case*, 4 Co. 26 b. Yet a steward, in his mere character of steward, and without a special authority from the lord, and *à fortiori*, a deputy steward, could not ever grant admittance to a copyhold out of the manor. *Doe d. Whittaker, ubi sup.*; Scriven, p. 99. But these clauses, it is obvious, will enable stewards to hold courts for the purpose of making grants and granting admissions any where they may please. One effect of this would seem to

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be, to dispense with the necessity of having deputy stewards. It is well known that many stewards of very large manors reside in London, and appoint deputy stewards, who do the necessary business in the country; but these sections will enable the stewards themselves to do the greater part of the work without leaving their own houses. On the other hand, the tenants will be relieved from much expense, occasioned by the necessity of holding special courts on every particular occasion. The business of every man in the country may thus be carried on in London, and the steward need know no more of the particular manor, than of the interior of China. This is a boon to the London stewards, but we fear these clauses will operate to the prejudice of the country solicitors who hold this situation.

The 79th section is fully as important, and will make as great a change in the present practice. Under it, after the 31st of December, 1841, every surrender, &c. delivered to the lord or steward, and every fact proved to the lord or steward at any court, whereat a homage shall not be assembled, shall be forthwith entered on the court rolls: and by s. 90, after the 31st of December, 1841, presentment by the homage shall not be essential to the validity of an admission. The effect of these two sections will be to do away with many of the peculiarities of the copyhold tenure. We fear it will, to some extent, injure the uniformity of the present system of entry, and it must be seen that all these alterations go greatly to do away with the publicity which has hitherto constituted a peculiar feature in the transfer of copyhold property.

A slight restriction on the power of the lord is imposed by s. 91, by which lords of manors in certain cases, are not to grant common or waste lands without the consent of the homage of the manor. "This provision," says Mr. Rouse,* in his edition of the act, "was wanted to meet the circumstances affecting a large manor in Middlesex." We believe it was the good people of Hampstead who took fright lest their healthy heath should be granted away by the mere act of the lord.

We have now brought under our readers' notice, the extensive alterations which will be made in this branch of the law by the present act. We conceive their effect is to de-

prive the copyhold tenures of many of those peculiarities which have hitherto accompanied it, and thus smooth the way for a general enfranchisement.

THE PROPERTY LAWYER.

TENANTS IN COMMON.

INSTANCES of an injunction having been granted between tenants in common or coparceners are very rare, but in *Twort v. Twort*, 16 Ves. 128, where a case of positive and actual destruction appeared, Lord Eldon, C., granted an injunction, as that was not a legitimate exercise of the enjoyment arising out of the nature of the party's title to that which belonged to him and the other party: and in *Hols v. Thomas*, 7 Ves. 589, the same learned judge granted an injunction, on the ground that the defendant was then cutting timber of one-third growth at an improper season, "for that" said his Lordship, "is destruction," and see *Goodwin v. Spray*, 2 Dick. 667. In a recent case, a railroad company had obtained a lease from five out of six tenants in common, and had, contrary to the wishes of the remaining tenants in common, constructed a railroad on the property. The dissenting tenant in common brought an action of ejectment against the company to recover possession, and recovered. *Doe d. Wain v. Horn*, 3 Mee. & W. 333; 5 Mee. & W. 564; and a court of equity refused to interfere by injunction to prevent the dissenting tenant in common from removing the rails, &c., though the rent agreed to be paid by the company was three times the former rent." "No cases," said Lord Langdale, M. R., "have been stated which are material as shewing this, that if property be held by tenants in common, and enjoyed in conformity with their common rights, and one makes wilful destruction of the common property, he will be restrained by the Court. This state of things does not exist; the state of things which now exists was brought about by the plaintiffs in defiance of the legal rights of the defendants. This, thus far, does not appear to me to come within the principle of the cases cited, and the injunction must be dissolved with costs." *Durham and Sunderland Railway Company v. Wain*, 3 Beav. 119.

LEASE BY COPYHOLDER.

In *Downingham's Case*, Owen's Rep. 17, it was resolved that if a copyholder make a lease for years which is not according to

* It should be observed that Mr. Rouse, in his edition, gives the forms and entries which will be required by these alterations. This certainly appears to us the most useful and complete edition of the act.

the custom of the manor, yet his lease is good, so that the lessee may maintain an action of ejectment; for between lessor and lessee and all others, except the lord of the manor, the lease is good. The rule has, however, been laid down differently. In *Jackson v. Neal*, Cro. Eliz. 395, it was held that ejectment would not lie on such a lease. See also *Wells v. Partridge*, Cro. Eliz. 469; *Erish v. Rives*, Cro. Eliz. 717; and *Patty v. Evans*, 2 Brownl. 40. However, in *Goodwin v. Longhurst*, Cro. Eliz. 535, it was said by the Court that a lease by a copyholder is good between the parties, though bad against the lord; and in the latest case on the point, it has been distinctly held, that a lessor for years of a copyholder may maintain ejectment, though there be no custom in the manor to lease and no license has been obtained from the lord, such lease being good as between the parties, and void only as against the lord. *See dem. Tressider v. Tressider*, 1 Gale & Davison, 70.

TRANSFER OF CHANCERY CAUSES.

THE Lord Chancellor has intimated his intention of transferring a further part of the causes set down before the Vice Chancellor of England,* in order to increase the list of Vice Chancellor Knight Bruce. His Lordship observed that the selection would be made from causes in which the briefs of counsel had not been delivered. It should also, we submit, be limited to those in which counsel have not been retained who practise before the former Judge and not the latter. If this circumstance be not attended to, the very proper arrangement which has been made by counsel for the purpose of forming *separate bars*, will be thwarted.

The right of the suitor to choose his own Judge may be open to objection, but when a cause has been once set down in a particular Court, it is clear that the suitor should be at liberty to retain any counsel he pleases, and ought not to be deprived of this right for the convenience of the Court.

The only mode we can suggest is, that after one hundred causes (or some such number) have been entered before one Judge, his list should be deemed full, until the like number shall appear in the lists of the other Courts, and then the former Court

* See p. 98, *ante*, for the order of 8th-December, transferring forty causes to Vice Chancellor Knight Bruce.

may be resorted to again. Thus a plaintiff who had selected his counsel might wait till a vacancy occurred in the list of the Court where such counsel practised.

NOTICES OF NEW BOOKS.

CHANCERY REFORM.

Considerations on Reform in Chancery. By an Equity Draftsman.

WE wish the author of this pamphlet (and we wish the same with regard to all pamphlets on this subject) had authenticated the advice contained in it by his name. All we know of him is, that he is an equity draftsman, and that "his attention has been, from recent pursuits, as well as from ordinary professional habits, directed much to the practice of the 'Court.'" (p. 13.) The author considers that it is from an average of opinions that the truths of procedure are to be extracted. But, in this view of the subject, the witness's name is very important. This pamphlet has much more of the critic than of the suggester in it. Its suggestions are confined to one* new one only; *viz.* that to enable the barristers to attend the Master more, the fees at present paid for that service, should be one fee for the whole reference, and not a fee *per diem*, as at present, (pp. 31 to 42); and to two old ones, *viz.* that the plan of paying the solicitor should be, to some extent, changed (p. 23), and that the distinction between party and party, and solicitor and client's costs, should be abolished.^b (p. 25.) Both these subjects are so sure to meet with attention from the Lord Chancellor's Committee, and both have for so many years been so familiar to our readers, that we shall not occupy their attention with them now. We will, however, just mention that our author's reading on the

* It will be seen, p. 31, that this suggestion is thus introduced—"The first thing I would suggest as likely to be conducive to the infusion of energy and system into the Master's Office." From this we inferred that there was a second suggestion. We cannot, though we have used due diligence, find it.

^b The author uses this word. He qualifies it, though seriously, when he says, in the same page, that a party should not "be permitted to charge his antagonist with any unnecessary expenditure incurred." This distinction which must prevail, will always occasion a difference between solicitor and client, and party and party's costs. That it is far too great, however, now is notorious.

case reported by Gulliver (Brobdiagnag), and cited by Mr. Pemberton in his admirable speech, is not a correct one. Merely to abolish the distinction between party and party, and solicitor and client's costs, will not prevent a great loss to the successful party, if he has to pay his solicitor from time to time, and to receive the same money back *without interest*, at the end of his "twenty years' litigation."

The rest of this pamphlet is critical; or rather it is a decoction, and with much dilution too, of what has been continually before the profession for the last fifteen years. The last twenty-two pages are taken up with a subject which, we thought, had been entirely put to rest—*When the Six Clerks' Office should be abolished?* and the officers there must indeed be surprised, now that they have (at least so it is generally understood) struck, or are about to strike their colours, to find a nameless equity draftsman, who can only know any thing about this part of the subject at second-hand, rush into a forlorn-hope-sally for their rescue. We should have liked to have had this bold gentleman's name, merely as a sort of gage; the announcement that we might know by whom these feats of valour are performed. Mr. Field (whose pamphlet affords the *pubulum* for a large part of our present author's remarks) carefully confined himself to questions connected with the offices and practice of the Court, which came exclusively or principally before the solicitor, stating that he thought it right not to touch on matters of which the bar are the best judges; such as pleading, and the mode of taking evidence. (Field's pamph. p. 4.) We think the present author had better have imitated his example. We will not fatigue our readers with going over his lucubrations on this subject; they have been infinitely better done by the Clerks in Court for themselves in Mr. Wainwright's late pamphlet. We are now justified in giving this subject the go-by. If a body of privileged attornies has existed in the common law and in the Irish equity courts, and have been abolished, and without a pretence of any thing but advantage; if to support an office for giving advice and instruction you must force those to pay for it who don't want it, or value it, or use it; if the duties, from being formerly intellectual, are become almost entirely clerical; if within half a century it has, out of pure incompetency, come from soliciting two-thirds of the business to be a mere porter's hall to the Court; if these officers can sell every client

when they die, or retain every one when they are lunatic; if by working 200 or 220 days in a year (and for the greater part of those days working lightly) one of these officers can earn a net income of 6000*l.* or 8000*l.* per annum;—then we say that it is a farce to pretend to discuss the question further; and we treat with some indignation pamphlets written by parties, at best, but little able to judge *by or for themselves*, to prop up a monopoly, which is dying purely from its utter incapacity to serve any beneficial purpose. Let the equity draftsman look at the history of this office: he has a strong love for the ancient ways of the Court. The Clerks in Court, at the beginning of the 17th century, were by no means in the position the solicitors are now. They were only the head clerks of the six clerks, and were altogether unofficial; but because they were the real workers of the court they were made into officers. If it was right in 1668 to interject the Clerks in Court between the suitors and the Six Clerks, it is as right now to interject the solicitors, and to cut away the dead branches from the living limbs of the law. Of course, we must have taxing officers: but why, as is now the case, is the office to be put up by the executors of dead Clerks in Court, or by the committees of lunatic ones, for sale to the highest bidder? Is it, after all, the right plan to buy and sell offices of justice, to which all suitors must go? Let the suitors judge between the solicitors and this equity draftsman. We are ashamed even to be invited to argue the matter again.^c

There is one gross error (at least so we conscientiously believe it) pervading these pages. It is that there is a difference of interest in all the questions of practice and procedure between the body of solicitors and the body of suitors. We have, over and over again, written on this subject. If we are wrong, or the present author is right, then we admit that we have widely and fatally erred. But how can it be that that which is a truth, so admitted and so obvious in all the other businesses and occupations of life, can be untrue with regard to the law. The cheaper, quicker, and better, any other seller can make his articles, the better for him and his customer too; a quick return is the thing that every tradesman

^c Is it fair in the equity draftsman to quote the Chancery Report of 1826, as he does, without adverting to Mr. Merivale's (one of the commissioners) recent statements respecting that report, and his present views on the subject?

above all desires. The solicitor is just as much interested as any other dealer to get the speediest return for the article he sells. The long suits now are, as has been shewn over and over again, an absolute loss to the solicitor. He only takes them because he is obliged to take all his client's work,—bad to get the good,—rough to get the smooth,—unprofitable to get the profitable. And what has been the effect of the length and expense of suits? that there were more annually came into Court one hundred years ago than now. What would be the effect of cheapening administrative procedure, for instance? Why if an executor's account could really be cheaply and quickly passed under judicial examination, would not every executor pass his accounts, at least every one where there are infants or married women to be passed through the equity courts, and the Legacy Duty Office be in effect a branch of the Masters' Office. To delay the conclusion of a suit which your client wishes terminated, is not only wilfully to damage the article which you are selling him, but is also to tax yourself in the shape of interest for old outlay, and charges twice the amount you can get by the improper elongation of the suit.

Admit this fallacy, and two-thirds of the pamphlet is disposed of. But there are other errors, and great, as we hold, in it also. The distinction between amicable and adverse business is not attended to, and the official inconveniences of the Court are treated as "minor" details. This last subject was one but little attended to till of late, and one, the importance of which, we take credit to ourselves, as having been among the first to point out. The suitor waits the end of his cause—a year is wasted in attaining this object. What matters it to him whether this year was lost in waiting for the cause coming on, or in drawing up the different orders in the registrar's office, or in single-hour warrants at two or three weeks' interval, in the Master's office? To ascertain the extent of loss in these offices, has been one of the most valuable labours of those who have contributed of late towards equity reform. It is an evil of which the cure will introduce no new rule of practice—no additional uncertainty or difficulty in the suitor's way—which will cost him nothing, and yet confer on him the thing which most of all he desires. Recent investigations^d have shewn that expence is but a secondary point; that delay is the

great one, and that indeed, expence is in the main but the fruit of delay. Our author fancies that all money paid to the fee fund is just so much lost to the client, (p. 64; &c.); not considering that that depends on what he gets in return for his fees. The money he pays is of but little moment, if thereby he can get a speedy conclusion to his suit. The author too, does not seem to be aware that hitherto smaller fees paid to a fee fund have produced the whole sum wanted to pay the officers, and that the fees required, have in consequence, been from time to time reduced.

Another great error of the present author, as we believe it, and a doctrine altogether at variance with the views we have from time to time expressed, is that there is nothing which can admit of assimilation or comparison in the methods of procedure used in different Courts; in other words, that there can be no such thing as a science of procedure. In a series of papers on the Master's office, which appeared in this journal some time since, we shortly touched on this subject. We will not do it again further now, than to express our conviction that there is in this subject-matter for a science, and that a great assimilation of practice is taking place, and will continue to take place, not only between the methods of procedure used in Common Law and Equity, but between those used here and those used in many foreign Courts. Why, for instance, do we want a serjeant-at-arms in Chancery, and do not want one in Common Law? Let the equity draftsman solve this question. We know of no true method of prosecuting such inquiries as these, but the inductive method. It is not by averaging opinions, but by investigating facts, that the desired truths will be ascertained.

We regret that such pamphlets as this should appear. Such a pamphlet as Mr. Wainwright's we are glad to see. We are at direct issue with him; but then it is to a straight-forward and rightdown fight that we come with him, and that in broad daylight. But such treatises as this only mystify us. In battling with them, we cannot tell where we are, what we are doing, nor to what conclusion we are to suppose ourselves invited. Like the Athenian lovers, whom Puck deludes, we are covered with drooping fog as black as Acheron, and can only exclaim with Lysander—

I followed fast, but faster did he fly—
That fallen am I in dark uneven way,
And here will rest me.

^d We allude especially to the evidence before the House of Lords on the new Judges' Bill.

LEGAL BIOGRAPHY.

SIR T. E. TOMLINS, KNIGHT.

SIR Thomas Edlyne Tomlins was born in London on the 4th January, 1762. He was the eldest son of Mr. Thomas Tomlins of Painter-Stainers' Hall, an eminent solicitor, well known in the political circles of the last century, and immediately descended from an ancient family of that name, some of the members of which resided in the county of Hereford, and others in Salop. He was educated at St. Paul's School, under the Rev. Dr. Roberts, and entered as a commoner of Queen's College, Oxford, on the 27th October, 1778. He was called to the bar by the benchers of the Inner Temple, in Hilary Term, 1783. He held the appointment of Counsel to the Chief Secretary for Ireland in the year 1801; and continued Parliamentary Counsel to the Chancellor of the Exchequer for Ireland until the union of the British and Irish Treasuries in 1816. In 1818 he was appointed Assistant Counsel to the Treasury, from which situation he retired in January, 1831. Sir Thomas received the honor of knighthood on the 29th June, 1814, at Wanstead House, and was created a bencher of the Inner Temple in Hilary Term, 1823; and filled the office of treasurer to that society in 1827.

Although the official avocations of Sir Thomas were such as to occupy much of his time, his assiduity enabled him to contribute largely to the stores of legal information, by the works he edited. These engaged his attention, with little intermission, from 1784 to 1820. Sir Thomas enjoyed the honor of having, as a Sub-Commissioner of Records, almost exclusively prepared the authentic edition of the "Statutes of the Realm," the first volume of which was published in 1810.

In early life, Sir Thomas was the editor of Baldwin's St. James's Chronicle and Whitehall Evening Post; and was always remarkable for the variety and extent of his learning and acquirements. He closed his long and industrious career on the 1st July last, in the full possession of his faculties in the eightieth year of his age.

The following is a list of his publications:—

Repertorium Juridicum: a General Index of all the Cases and Pleadings in Law and Equity. London. 1786-7, fol.

Familiar, plain and easy Explanation of the Law of Executors and Administrators; also the Rules by which Intestate Estates are distributed. The same work, reprinted under the title, Familiar Explanation of the Law of Wills, the Law of Descents and Distribution, the office and duty of Executors and Administrators; with Forms of Wills and other practical Instructions. 1810, 8vo.

Cases explanatory of the Rules of Evidence before Committees of Elections in the House of Commons; compiled from the Reports of Trials of controverted Elections before such Committees. London, 1796, 8vo.

The Law Dictionary, explaining the Rise,

Progress, and present state of the English Law in Theory and Practice, defining and interpreting the Terms or Words of Art, and comprising copious information, historical, political, and commercial, on the various subjects of our Law, Trade, and Government, originally compiled by Giles Jacob, and continued by him and others through ten editions.

A Digested Index of the first 7 vols. of Darnford and East's Term Reports in the Court of King's Bench, from Michaelmas Term 26 Geo. III. 1785, to Trinity Term 38 Geo. III. 1798, inclusive; with Tables, &c. 1799.—1801.

Supplement to the second edition of the Digested Index; containing the points determined in the King's Bench and Common Pleas from Michaelmas Term 1800, to Trinity Term 1805.—1807.

A third Edition of the same, containing all the points of Law determined in the King's Bench and Common Pleas, from Michaelmas Term 1785, to Trinity Term 1805, &c.

The Common Pleas from Easter Term 1788, to Trinity Term 1805.

In 1804, a fourth Edition, enlarged, containing all the Points of Law determined in the Court of King's Bench, from Michaelmas Term 1785, till Easter Term 1810; and in the Court of Common Pleas from Easter Term 1788, till Easter Term 1810-1812. 8vo.

Reports of Cases on Appeals and Writs of Error, determined in the High Court of Parliament, by Joseph Brown. Esq. Second edition, with Notes, and many additional Cases, brought down till 1800. London, 1803. 8 vols., 8vo.

Statutes at Large: 41 to 49 Geo. III., being vol. 1, 2, and 3, of the Statutes of the United Kingdom, 1804-10. (This forms a continuation of those records by Ruffhead.)

Proceedings of the Court of Inquiry upon the conduct of Sir H. Dalrymple. 1809, 8vo.

Index to Acts relating to Ireland, from 1801 to 1825. 1825, 8vo.

The same to the end of the Session, 10 Geo. IV. 1829.

[Abridged from the Gentleman's Magazine, 1841. p. 321-2.]

POINTS OF LAW AND PRACTICE BY QUESTION AND ANSWER.

PAROL EVIDENCE TO EXPLAIN AGREEMENTS.

1. Can the day for the completion of the purchase of an interest in land, inserted in a written contract, be waived by oral agreement?
2. On a written agreement to demise from Lady-day, can parol evidence be received that the parties meant old Lady-day?
3. May parol evidence be given of the fact of tenancy under a written agreement?
4. Can parol evidence be received where the written contract is imperfectly worded, or had been partially altered?
5. May parol evidence be received of one of

- the parties to the written contract being an agent only, and not the principal contracting?
6. Can parol evidence be given of the statement of an auctioneer regarding the quantity of timber sold, not specified in the conditions of sale?
 7. Is parol evidence receivable of a promise to pay rent beyond the amount specified in the written agreement?
 8. Under a contract to sell several lots of land, to one of which the title was imperfect, can parol evidence be given of a waiver of the objection?
 9. On a contract to take a person into partnership as an attorney, who was not then admitted on the Roll, can parol evidence be received of such person not being admitted, so as to show that the agreement was illegal; and is parol evidence receivable that the agreement was not intended to be acted on till the party was admitted?

We have stated a few questions only on this head of evidence; but the student who searches for the authorities applicable thereto, will find the points very comprehensive, and the exercise will be sufficient for one reading, particularly if he looks into the judgments given by the Court on the cases in question.

ATTORNEYS' CERTIFICATE DUTY.

Mr. Editor,
My attempt to support this duty has brought forward my old antagonist "Legalis;" but I do not feel myself convinced by his arguments, although he renews the contest under favourable circumstances—the tide of liberal opinion, that taxes of any sort ought to be got rid of, being in his favour.

He professes to offer a few strictures on my communication, but I feel grateful that he has held me so much in mercy, that I am bound to say his pleasantry has highly amused me.

Legalis says, "Our complaint is not that we are insulted, but that we are unequally and unjustly taxed. The question is not one of professional dignity, but one of finance,"—forgetting that it is not I, but a zealous brother repealer who, oddly enough, stamps the tax with degradation and insult. I, however, agree with Legalis, that the question is one of finance.

In introducing the name of Adam Smith, Legalis would infer that I had put an extinguisher upon my own argument; but I only cited the Doctor as authority for a fact. His book, however, was not then before me, and as Legalis would imply that I have dealt dishonestly, I crave your indulgence for an attempt to set myself right. I said—"It was, I think, a complaint made by Adam Smith, that not one in 20 were capable of pursuing the profession." The Doctor, who was a wise man in his day, says, "Put your son apprentice to a shoemaker, there is little doubt of his learning to

make shoes; but send him to study the law, it is at least twenty to one if he ever makes such proficiency as will enable him to live by the business. In a profession, where twenty fail for one that succeeds, that one ought to gain all that should have been gained by the unsuccessful twenty." The doctor's meaning and mine were evidently not very different; and it is somewhat remarkable that Legalis should not have met with these passages, his last quotation being taken from the paragraph in which they are to be found.

Legalis has a quotation to prove, that when the tax was first imposed there were resentful attorneys who would have increased it, but Mr. Pitt, that most virtuous of financiers and most excellent of statesmen, was deaf to their resentment, and reluctantly imposed the lower duty. It must be remembered, that the "Wealth of Nations" was then before the world; and it is rather unfortunate that Legalis has not said against whom those wicked attorneys directed their resentment—whether against their own order, or against the nineteen out of the twenty who the doctor more than insinuates were incapable of pursuing their profession. Legalis has, however, said enough to induce the belief that the attorneys of that day were grateful for, and satisfied with, the tax as then imposed, and would have been more so if it had been higher. It cannot, therefore, with propriety be said that there was any *injustice in imposing it*.

In the dryness of this question it is refreshing to find Legalis bearing a cheering testimony to the glories of Waterloo, notwithstanding he previously says: "It became necessary to sacrifice something, that we might preserve the remainder of our property; and the profession almost without a murmur submitted to the double burthen." It is satisfactory to know that the profession then, as now, had a loyal bearing; and I cannot help fancying that Legalis has made but a case showing the necessity for continuing and doubling the original impost—eering the strait into which the country was placed.

"But," says Legalis, "it was a war tax, and after six and twenty years of peace, ought to be repealed." The same may be said of many other taxes. Financiers, however, will tell us it cannot; and because I believe there are other taxes which are entitled to a priority, I think it ought not; and as Legalis has so convincingly shown that the tax was originally welcomed by the profession, and was doubled without a murmur, and admits the question between us to be one of finance, the *onus* lies upon him to show how the duty can be dispensed with—a task infinitely more difficult than declaiming against it.

As Legalis disclaims every intention of bringing the clergy under the yoke of this duty, I will not heedlessly seek to occupy your columns by the institution of any comparison with them; but as he very properly considers this a question of finance, proceed at once to shew upon what principles I support it.

We have both appealed to Dr. Smith, but I infer that he is more an authority with Legalis

than myself, although I assent to his maxims or principles of taxation, which are: 1st. That we ought to contribute towards the support of the government in proportion to the revenue we enjoy under its protection; 2nd. That taxes ought to be certain; and 3rd., That the costs of collection ought to be as little as possible. If we apply these principles to the certificate duty, their aptness is apparent; and this must be considered a very good tax, because although I believe very few attorneys make their thousands a-year by their profession, and that there are thousands of individuals who double the average of professional incomes by trade, the latter may be, and I fancy are, regarded by financiers and economists as the bees, and the attorneys, the hawkers, and peddlers, and ale-house keepers, as the drones in the hive; because their labour does not contribute to the wealth of the nation; and what the doctor has said respecting the ale-houses, "that it might to many people appear not improper to give some discouragement to the multiplication of little ale-houses," may be considered very applicable to attorneys in the small way, who, generally speaking, are great nuisances.

Besides which, the profession confers *caste*, and it has certain exemptions—from the troublesome office of juryman, for instance. I am prepared to concede to Legalis that since money has become our idol, *caste* is very little regarded; but I still consider it something.

With regard to the professional observation of Legalis, that we are not concerned for the gentry comprising the auctioneers, &c., it is too selfish to deserve attention; and I regret that he so far forgot that he was a member of a learned and liberal profession as to use it. Pardon me, Sir, for saying, that having more regard for, than interest in, the profession, the broad principle of injustice to others, and a violation of our duty towards the government, let its political character be what it may, have always appeared to me among the honest and fair grounds upon which a resistance to a repeal of this duty ought to be supported.

U. Z. L.

CONSTRUCTION OF THE NEW ORDERS.

THE difficulties which have been felt, as well by counsel and solicitors, as by the masters and registrars, in discovering the meaning of some of the orders issued in August last have occasioned frequent applications to the Court. The first five orders have been suspended, and the *Vice Chancellor of England* expressed his opinion, that if some more of them were not suspended, the Court would be virtually shut up to many of the suitors, and in the course of fifty years its records become wholly unintelligible. His Honour, we understand, has on several occasions, found it necessary to hold a conference with some of the other equity judges before he could give a decision upon questions arising

on the interpretation of the orders. Our readers are aware that the orders were not signed by his Honor. It now appears, that that they were not even submitted to him, and that he knew nothing of them until they were actually promulgated.

In the case of "*Ex parte Grant*," which was mentioned to the Court a few days ago, the master had simply reported (in obedience to what he conceived to be the construction of the 43th order,) the fact submitted to him, without stating any of the grounds of his conclusion. When a petition was presented to confirm this report, his Honour expressed his alarm at being called upon to do so, without being satisfied as to the grounds upon which the master had formed his conclusion, and refused to make the order until he had conferred with some of the other judges.

In addition to the report of that case, which will be found at a subsequent page, we may here mention some remarks which were made by several members of the Bar.

Mr. *Stuart* said, that so much time was taken up, and so much trouble occasioned, both to the judges and the profession, that it was the general feeling of the bar that the orders should be suspended.

Mr. *Girdlestone* said the equity draftsmen were quite unanimous on the point.

The *Vice Chancellor* adverted to the difficulties attending a compliance with the orders, in framing the interrogatories to a bill, and he thought it desirable that what had now been urged from the bar should be stated to the Lord Chancellor.

The 48th order directs that in the reports made by the masters of the court, no part of any state of facts, charge, affidavit, deposition, examination, or answer, brought in or used before them shall be stated or recited; but such state of facts, charge, &c., shall be identified, specified, and referred to, so as to inform the Court what state of facts, charge, &c. were so brought in or used.

MOOT POINTS.

APPRENTICE.—PREMIUM.

A refractory apprentice was brought up before a bench of borough justices a short time ago. A solicitor appeared for the defence, and required the production of the indenture of apprenticeship, by which it appeared no apprentice fee had been given. On this ground he contended that the prosecutor had no power over the defendant. He cited a case from a newspaper, in which it was stated that Lord *Denman* had decided that where there was no premium the apprentice could not be retained. His Lordship adding, that it appeared to be a defect in the act; but that such was the case. The magistrates, however, committed the prisoner for one month. Recognizances were then entered into, to prosecute the appeal at the sessions. As this is a point

of some importance, perhaps some other correspondent will be kind enough to say whether there is a decision to the above effect.

A SUBSCRIBER.

SELECTIONS FROM CORRESPONDENCE.

ALLOWANCES TO COUNTRY SOLICITORS.

To the Editor of the *Legal Observer*.

Mr. Editor,

HIGHLY commending your laudable endeavours to promote the respectability of the profession, in connection with the interests of the suitors, permit me respectfully to invite your attention to a subject, in my humble opinion, affecting both. Great and important changes are now going on in the world, from which our profession is not exempt; whether they can be called improvements is an open question, too extensive, I fancy, for discussion in your columns. There is one alteration, however, which I would press on your attention at this moment, as one materially effecting both public and private interests. It is thought, Sir, by some of us simple country practitioners, that it is an hardship from which we ought to be delivered,—that we are not allowed the expenses of journeys to town, for the purpose of comparing abstracts with deeds; attending courts, and also in the master's office. In all these matters the law throws great responsibility upon the country practitioner, under which, they do not feel themselves comfortable when they consider that their agent, to use a well-known observation "*Is only an agent in the matter.*" Pardon me, Sir, for intruding this subject upon you at this season of the year. I think the interests of our clients would be promoted by the change I propose, and that at no greater costs than at present.

A COUNTRY PRACTITIONER.

COPY-MONEY AT THE MASTERS' OFFICES.

Sir,

You are perhaps not aware of the extent of profit derived by the clerks of the Masters in Chancery, who have the management of the copying, neither can I bring myself to believe that the Masters themselves can know the exact state of the case, otherwise they would insist upon a reasonable compensation being made by their clerks to the poor men, who, according to the present amount allowed, are absolutely compelled to be slaves to their pens to obtain the common necessities of life. *One-half-penny* per folio (that is, ninety words,) is all that is paid to the man who actually copies the documents, while the Master's clerk receives *three-half-pence* per folio, besides a difference in counting, and therefore he realizes upwards of one-penny per folio; and supposing there should be four or five thousand folios sent out in one week, which is very frequently the case, and, in fact, often more, he will clear fifteen or sixteen pounds, while each poor copying man is obliged to content himself with as many shillings to support a wife and

family. I should also observe that this is quite independent of a salary of 150*l.* a-year, which the Master's clerk is in receipt of. There is also a reason why some degree of liberality should be shewn towards the writers, namely, that by their calling they are deprived of their natural rest, for the work is not given out until four o'clock in the afternoon, and must be completed at the opening of the offices on the following morning.

A POOR WRITER.

BARRISTERS CALLED,

Michaelmas Term.

LINCOLN'S INN.

Richard Coote.
Albert Francis Jackson.
Thomas Young Mc'Christie.
Charles James Foster.
John Bruce Norton.
Charles Bruce Skinner.
Robert Ralph Augustus Hawkins.
Marsham Elwin.
John Edensor Heathcote.
William Powell Murray.
Pryce Ilbert Harrison.
Edmund Beckett Denison.
William Dashwood Fane.
Robert William Mills Neasfield.
Humphrey William Freeland.

INNER TEMPLE.

John Robert Cornish.
Thomas Charles Cathrey.
William Mellish Chambers.
James Lockhart Robertson.
Thomas Stamford Raffles.
Thomas Hack Naylor.
Adam Bittleston.
Alexander Gordon.
Henry Tudor Davies.
Alfred Waddelove.

MIDDLE TEMPLE.

John Salusbury Trelawney.
James John Scott.
Henry Richard Dearsly.
William Hussey.
Alfred Domett.
Joseph Arnold.
John Bridge Aspinall.
Rowland William Davies Collett.
William Liddell.
John William Williamson.
George Knight Huxley.
Thomas Solly.
John Leveson Gower Ward.
Francis Scully.
Peter Benson Maxwell.
David Edmund Babington Ring.
Francis Lucas.
Peter Cotter.
Roger Watters.
William Greene Atkinson.

GRAY'S INN.

Hamilton Geale.
John Archibald Russell.

SUPERIOR COURTS.

Lord Chancellor.

BOND.—BANKRUPT.—INTEREST.—PART PAYMENT.

A bond creditor is not obliged to apply the dividends he receives from the estate of one of the obligors, a bankrupt, in discharge of principal, until all the arrears of interest have been paid; and he is therefore entitled to receive his balance under a decree for the administration of the estate of the co-obligor.

The following judgment sufficiently explains the facts of the case on which it is founded:

The Lord Chancellor.—If there be any surplus of a bankrupt's estate, after paying 20s. in the pound, of the debts proved, which is, unfortunately, of rare occurrence, this would be a very important case. One of two joint and several obligors become bankrupt, and against his estate the obligee proves for the principal and a small arrear of interest due at the date of the commission, and in the course of seventeen years receives different dividends amounting to 20s. in the pound upon the debt so proved, and afterwards, under a decree for the administration of the estate of the co-obligor, claims payment of what he has not received from the estate of the bankrupt, and insists that the account is to be calculated by applying the dividends from time to time received in discharge of the interest then due, and the surplus of any in discharge *pro tanto* of the principal. This, no doubt, is the ordinary mode of calculation, and is the general custom and course of dealing in cases of mortgages, bonds, and other securities. As the principal does, and the interest does not carry interest, no creditor can apply any payment to the discharge of part of the principal while any interest remained due. If, therefore, there had been merely payments on account, there would have been no question between the parties. But it is said on behalf of the obligor's estate, that the payments by way of dividends under the bankruptcy of the co-obligor, were appropriated, and were paid to, and received by the obligee on account of so much principal money, and therefore interest from time to time ceased on the amount of such principal money, although large sums were at those periods due for interest. The question, so far as it is a question of principle, turns upon the accuracy of this view of the case. The proposition rests upon this, that the payments consisted of dividends of so many shillings in the pound, and that the sums on which such dividends were made, being the debt proved, consisted (except a very small part) of the principal due on the bond, and therefore, that upon payment of every dividend, so many shillings in each pound of such principal money as the dividends consisted of, was by such payment discharged. In the first place, as this mode of payment is regulated by act of parliament, the doctrine of appropriation, which is founded upon the intention, expressed or implied, of the debtor or

creditor, cannot have any place in the consideration of the present question. The estate of the obligor under administration is liable to pay all that the obligee has not received from the co-obligor; that is to say, he is entitled to his principal and interest up to the time of the payment; and he is entitled to apply all payments on account of the interest due, before he could be bound to apply any part of it towards the discharge of the principal. If, therefore, he is bound, because these payments are made under the bankruptcy, to apply them towards discharge of part of the principal which bears interest, and thereby to leave interest due which does not bear interest, he is a loser by the bankruptcy, although the whole of the principal and interest is ultimately paid; and what would be a more extraordinary result, the co-obligor will in the present case be a gainer by it in the same proportion, for although he is himself bound to pay principal and interest, he could not compel the obligee to accept payment of the principal while interest remained unpaid, yet he would derive the benefit of such payment out of his co-obligor's estate. This would be to give the mode of payment in bankruptcy the effect of depriving the obligee of part of his debt, and of relieving the obligor from the liability to which he had by the bond subjected himself. This would be manifestly unreasonable and unjust, and is attempted to be supported only by the supposed appropriation of the dividends to the payment of so much of the principal; but in fact there is no such appropriation. The interest stops at the date of the commission, and the subsequent interest which becomes due is not proveable under the commission. The bankrupt's estate is taken from him by the commission, and the law, in order to make an equal distribution among the creditors, pays to each a dividend upon the debt due; but this is merely an arrangement for the convenience of the debtor's estate. The bankrupt continues indebted for the principal and interest accrued since the commission, although his certificate (if he obtains one) protects him against the liability to the debt, and being so indebted, payments are made out of his estate to the obligee. Why should such payments have a different effect to what they would have if made by a solvent obligor? Why should they lessen the reticely which the obligee would have as against the co-obligor? Suppose the bankrupt does not obtain his certificate, but afterwards acquires property, and is sued by the obligee, ought not the obligee to be entitled to compel payment of all he could have demanded, if there had been no bankruptcy? Suppose the assignees realise a surplus to the estate, ought the obligee in the case supposed to suffer, and the bankrupt's estate to be benefited by that? By the 6 Geo. 4, c. 16, s. 132, the bankrupt is not to receive the surplus until all the creditors have received interest upon their debts, to be calculated from the date of the commission. This provision obviously intended to make good to the creditor that interest which by the course of administration in the bankruptcy

they had lost. Interest is stopped at the date of the commission, because it is supposed that the estate will be insufficient. It proves to be more than sufficient. Why is the creditor to suffer, and the bankrupt's estate to be benefited by attributing the dividends to principal instead of interest? The creditor in that case will not have received interest upon his debt to the same extent as he would have if there had not been any bankruptcy, and yet the act must have intended to place him in as favorable a situation. If there had been no decision on this subject I should have thought these reasons conclusive in favour of the mode of calculation adopted by the Master; but from the year 1745 to the case of *Ex parte Higginbottom*, 2 Glyn & J. 123, there has been a succession of cases in which this principle has been acted upon; and although it was not in all matter of adjudication, they prove that such was the recognized rule, so well understood as not to be the subject of question. It appears to have been carefully established by Lord Hardwicke in *Bromley v. Goodeve*, 1 Atk. 75. The order appears to have been framed by himself, and is so expressed as to leave no doubt of its having been most carefully considered; and this was the opinion of that great judge of the justice of the case, without the aid of the statute. In *Ex parte Morris*, 1 Ves. jun. 132, Lord Roslyn refers to this case, and says the whole must be computed as running interest. In *Ex parte Mills*, 2 Ves. jun. 295, Lord Roslyn says, "Lord Hardwicke's line has been pursued by every judge; it has now been above fifty years confirmed by every judge." The attempt there was to depart from the order, but not on this point; but if on this point that order had been thought questionable, we should neither have found such absence of comment on the part of the counsel, nor such strong approbation on the part of the judge. In *Bulcher v. Churhill*, 14 Ves. 534, Sir William Grant seems to refer to the mode of calculation adopted by Lord Hardwicke, and with approbation he says, "Lord Hardwicke held clearly that interest was referable to the original debt so long as that was undischarged, and allowed it in that instance until the whole was wound up." In *Ex parte Doe*, 2 Bos. & Pul. 213, Lord Mannes directed the commissioner to take an account of the interest in the same manner as Lord Hardwicke had directed in the above case. And in *Ex parte Roe*, Lord Eldon directed the order to be in the same words as Lord Hardwicke's order. This particular point in that order had not been the subject of discussion, but Lord Eldon's direction proves that he had considered and approved of the whole of it. Against all this authority there is nothing but the case of *Ex parte Higginbottom*, 2 Glyn. & J. 123, in which no authority was cited, and which Sir John Leach decided upon the supposition that the mode of calculation directed by Lord Hardwicke would give compound interest, which was clearly a mistake. It is true that in certain cases dividends have been considered as aliquot part of the debt upon which interest is to be

paid; but in all these cases the ground of the decision has been, that to adopt any other rule would work injustice, and defeat the contract between the parties. Such were the cases of *Palry v. Field*, 12 Ves. 435; *Bardwell v. Lyall*, 7 Bing. 489; *Rutikes v. Todd*, 8 Adol. & El. 846; and *Ex parte Holmes*, 8 Law Jour. 33. These are not authorities for applying the rule to cases in which it would create a considerable degree of injustice, and defeat the contract, instead of doing justice between the parties. In those cases the Court looks to the effect which the rule would produce on the interest of the parties, and not to any abstract principle of appropriation. It was said that from the date of the order in *Ex parte Higginbottom*, a practice had prevailed of calculating interest in the manner there directed. I have caused enquiries to be made on that subject. I do not find that to be the case. Indeed, the instances of there being a surplus have been so few that there have not been materials for establishing a practice. I have also had searches made to ascertain whether any order can be found tending to shew what the practice had been; but I have not derived any assistance from such searches. It has been suggested that the law of appropriation has undergone some change in consequence of the case of *Deacones v. Noble*, and that Lord Hardwicke's order would be inconsistent with the present state of the law founded on that case if *Deacones v. Noble* did not establish any new law. The points there expounded, do not appear to have any application to the present case, and the general rule for the appropriation of payments are of much older date than that of Lord Hardwicke's decision, being all derived from the civil law. I am of opinion, upon principle and authority, that the master's report was correct, and the petition, excepting to the report, be dismissed with costs, and an order made on the other petition confirming the report.

Bower v. Marria, 7th August, 1841.

Rolls.

PRACTICE.—PARTIES OUT OF THE JURISDICTION.

Where any of the parties to a suit, who are beneficially interested, are out of the jurisdiction, the Court cannot make a decree to bind their interests, although their absence may not prevent the hearing of the cause. Formerly, the objection was taken as a preliminary object, but now the usual course is to suggest it at the hearing.

This was a suit instituted for the specific performance of a contract entered into with certain trustees of a voluntary settlement—one of the *cetui qui trusts* in which was out of the jurisdiction—and the question was, whether the cause could be heard in the absence of such party. The case having been argued on a former day,

The Master of the Rolls now delivered judgment; and after referring to the situation of the parties, stated, that Lord Eldon held it to

be a general rule that all persons having clearly an interest in the subject of the suit, must in some way be brought before the Court; but he also stated, that there might be exceptions to this general rule, and in *Cockburn v. Thompson*^a he referred to various cases in which the rule could not be strictly enforced. Lord Redesdale thus expressed himself with reference to it in his work on Pleading:—"The general rule admits of many qualifications. When a person who ought to be a party, is out of the jurisdiction of the Court, that fact being stated in the bill, and admitted by the defendants, is in most cases a sufficient reason for not bringing him before the Court; and the Court will proceed without him against the other parties, *as far as circumstances will permit.*" And in *Smith v. The Hibernian Mine Company*,^b Lord Redesdale also said, that the ordinary practice where one party was out of the jurisdiction, and other parties within it, was to charge the fact in the bill that such a person was out of the jurisdiction, and that then the Court proceeded against the other parties, notwithstanding he was not before it. There was, therefore, sufficient ground to conclude that the objection as to parties being out of the jurisdiction, was not to be considered in the nature of a preliminary objection, but that it should be taken at the hearing. In this case, then, the plaintiff was entitled to proceed to a hearing, but the question was, whether it was desirable. The Court could not bind the interests of adverse parties who did not appear; and here was a vested interest in a party abroad. The bill was for the specific performance of an agreement, and a conveyance would be required, one of the parties beneficially interested being out of the jurisdiction. The Court could not make a reservation in its decree to allow the absent party to come in and object, or to put in an answer; and there was no case where trustees had been called upon to convey under such circumstances. Still if the Court could not give the plaintiff all the benefit he sought, it might give him some. Here a receiver had been appointed; but the purchaser might think it best to pay his purchase-money into Court, and be let into possession; and if the plaintiffs thought they could obtain any benefit, they had a right to have the cause heard. There was no case lately in which the objection had not been taken at the hearing, although the old practice was different. His Lordship then referred to the cases of *Walley v. Walley*,^c and *Attorney General v. Balio College*,^d in proof of his last position, and left it to the plaintiffs to proceed or not to the hearing as they might think it desirable.

Pemberton, for the plaintiffs, said, that the point was of such extreme importance to the practice of the Court, that it would be desirable to have it considered in the highest tribunal.

Tinney for the defendants.

Willats v. Bushy. December 6, 1841.

^a 16 Ves. 321.

^b 1 Sch. and Lefr. 240. ^c 1 Vern. 384.

^d 9 Mod. 407.

Vice Chancellor of England.

PRACTICE.—CONSTRUCTION OF 21ST ORDER OF AUGUST, 1841.

The above order, which allows a plaintiff to file a note at the Six Clerks' office, in case the defendant shall not have filed a plea, answer, or demurrer, within the time limited by the rules of the Court, does not apply to infant defendants.

Jeremy moved under the above order for leave to file a note where no answer had been put in, and the time had expired; and he mentioned the matter to the Court, because the defendants were infants, and he doubted whether the order was intended to include infants.

The Vice Chancellor said he would consider the order, and this morning stated, that he conceived it was intended to apply only to adult defendants.

Emery v. Newsome, December 8 & 9, 1841.

APPOINTMENT OF TRUSTEES UNDER 1 W. 4. c. 60.—CONSTRUCTION OF ORDER 48 OF 26TH AUGUST, 1841.

After a reference to the master, under the 1 W. 4, c. 60., to enquire whether it is proper that new trustees should be appointed in place of those out of the jurisdiction, the Court cannot make an order for the appointment of such new trustees, without being satisfied, either by the master's report, or in some other way, that the parties applying for the order are beneficially interested.

A petition had been presented in this matter under the above act, for the appointment of two new trustees of a mortgaged property, in lieu of two ladies who were out of the jurisdiction, upon which the usual reference to the master was ordered.

The master had since made his report, in which after simply referring to an indenture of settlement, he found that the ladies in question were trustees for the parties beneficially interested in the mortgage money and interest under the trusts of such settlement.

Toller now moved to confirm the report, and for the appointment of two trustees in place of those out of the jurisdiction, but he admitted, that in consequence of the 48th order of August last, which directed that no state of facts, &c. brought in or used before the master should be stated or recited in reports, there was not sufficient evidence upon the report to shew that the parties applying were parties beneficially interested, although that fact clearly appeared by the deeds produced before the Master.

The Vice Chancellor said, that the master had no doubt prepared the report in accordance with the directions contained in the order of August, 1841, but it did not give the Court the information upon which the report was founded, and it was impossible therefore that the Court should make the order without referring to the documents themselves; and if

that were to be done in all such cases no other business could be got through.

His Honor took occasion to repeat, that he knew nothing of the new orders of August, 1841, until they were brought to him signed one morning in September.

Re Peter Fraser Grant, December 10, 1841.

Dec. 14th.—The *Vice Chancellor* this morning said, that since this matter was before him, he had conferred with one of the Judges of the Court, who had had a similar case under his consideration, and that learned Judge informed him that he refused to make an order for confirming the report of another Master, because he conceived the Master's report was wrong in point of form, and that the Master had wholly misconceived the meaning of the 48th Order, the object of which was not to direct the Master to omit the statement of the grounds on which he came to his conclusion, but, leaving that as it was, it required the Master to state the evidence upon which he had founded his opinion. The Order was made for the purpose of amending that which was found inconvenient; but the Court must know on what evidence the Master actually proceeded, and what are the facts to be inferred from such evidence, and his ultimate conclusion.

Vice Chancellor Whigram.

PLEADING.—DEMURRER.—MULTIFARIOUSNESS.

Where a defendant by his plea and answer submits to an original bill, which was multifarious, he cannot afterwards demur generally upon this ground.

An amended bill was filed by the plaintiffs as next of kin of Hannah Slade, against her representatives, who were also executors of her father Robert Slade, and it prayed for an account and distribution of the estates of both. The original bill was between the same parties and contained a similar prayer. To so much of the former bill as sought an account of the father's estate, there had been a plea of a settled account; and as to the estate of the daughter, the defendants gave the discovery sought. The bill was then amended by inserting charges, which if true, would have had the effect, either of disproving the truth of the defendant's plea to the original bill, or shewing, that, by reason of fraud and other circumstances, the alleged settlement of account would not avail in a Court of Equity. The defendant now demurred generally to the amended bill, on the ground of multifariousness.

Mr. S. Sharpe and Mr. Freeling, in support of the demurrer; Mr. Teed and Mr. Wilcock for the bill.

The principal cases cited were *Ellice v. Goodson*, 3 M. & Cr. 653; *Prosser v. Edmonds*, 1 Young & Col. 481; *Ritchie v. Aylwin*, 15 Ves. 30; *Powles v. Hewitt*, 7 Sim. 471; *Stephens v. Frost*, 2 Y. & C. 297.

The *Vice Chancellor*.—The general rule, undoubtedly is, that, where there has been an answer to any part of the original bill, a party cannot file a general demurrer to the amended bill. The reason assigned for that, in the old cases, is, that the amended bill is considered as the original bill written upon, and therefore as it is the same bill, you cannot demur to it. Now if the Courts, before this rule was established, had done what Lord *Cottenham* did in *Ellice v. Goodson*, and had asserted the right to look into the record to see in what respect it was corrected from time to time, it seems to me clear that they might have framed a rule which would have done justice to the parties, and not sacrificed the plain justice of the case to a mere point of form. However, the rule is established, and with that rule I have to deal. Lord *Cottenham* decided in *Ellice v. Goodson*, that where the defendant has submitted and has by his answer waived the objection to the original bill, he cannot afterwards file a general demurrer for multifariousness. The objection of multifariousness does not depend upon the extent of inconvenience which may be entailed upon a party when the interests are distinct, but upon this, namely, that you are combining in one suit two distinct subjects in which different persons are interested. I must say that I think, in this case, there has been a submission by the defendants to have the two distinct matters,—which the demurrer now insists were improperly united in one suit,—disposed of in that suit, subject only to the question of the amount of the defendant's liability. Following therefore the authority of Lord *Cottenham*, I am bound to overrule this demurrer. If desired, however, by the defendants, I will in the order giving them time to answer, declare that such order shall not prejudice any application they may be advised to make for leave to plead.

Slade v. Slade, Lincoln's Inn, November 13 & 14, 1841.

Queen's Bench.

[Before the four Judges.]

ATTORNEY.—PLEADING.

In answer to a declaration in assumpsit for work and labour as an attorney; the defendant pleaded that as to—1. parcel, &c. the alleged causes of action accrued to the plaintiff in the character of a solicitor, and that "at the time of the accruing of the alleged causes of action," &c. "the plaintiff was not a solicitor duly admitted and enrolled in that behalf, and that he was not duly qualified according to the act;" held bad on special demurrer, for duplicity and uncertainty.

Assumpsit on an attorney's bill for money paid, and on an account stated. There were several pleas, the fifth of which was, that as to 256*l.* parcel, &c., defendant says, that the alleged causes of action in the said first count mentioned, and each of them accrued to the plaintiff as and in the character of the said

defendant's solicitor, and under colour that the said plaintiff was a solicitor in the High Court of Chancery, in bringing, prosecuting, &c., as the solicitor of and for the now defendant; and at the time of the accruing of the alleged causes of action in the said first count, &c., the plaintiff was not a solicitor in the said Court of Chancery, duly admitted and enrolled in that behalf, &c. and he was not duly qualified according to act of parliament.

Demurrer to the plea as uncertain, for that it alleges he was not duly qualified at the time of the accruing of the causes of action, instead of stating that he was not duly qualified at the time when he did and performed the work, &c.; and for stating that he was not duly admitted and enrolled; and for stating that he was not duly qualified according to act of parliament, and is multifarious, in this, that it involves all the species of illegality and disqualification which could prevent the plaintiff from practising as a solicitor, and that the plea is double. Joinder in demurrer.

Mr. Kelly (with whom was Mr. Fortescue) for the plaintiff.—The plea here is bad for duplicity. This mode of pleading puts forth so many matters of defence, that the plaintiff cannot take issue on any of them. The want of enrolment would be a defence by itself.—*Humphreys v. Harvey*, 1 Bing. N. C. 62; 2 Dowl. P. C. 827. It either puts in issue a great many different facts, either one of which would be an answer to the action, or it tenders an issue on a conclusion of law, and is therefore bad; *Eyre v. Shelley*,^a or it is a negative pregnant, in not shewing in what way the plaintiff was not duly admitted. *Webb v. James*.^b Then again the plea is bad for alleging that the plaintiff was not duly qualified at the time the action accrued. This allegation is uncertain and involves matter of law; *Rothery v. Munnings*,^c and as the plea in this respect tenders an uncertain issue, or an issue of law, it is bad. The plea ought to have confined the allegation to the time of doing the work, and have alleged the want of qualification at that time. As it is framed in a different manner, it cannot be supported.

Mr. Creswell for the defendant.—The plea is good. It tenders an issue of fact, and though that one fact may be made up of different circumstances, the fact itself is still a single and ascertained matter. The allegation that the plaintiff was not duly qualified to practise in Chancery refers to admission and enrolment, which though separate circumstances in themselves, constitute the single fact of qualification. There can be no mistake nor any uncertainty on that matter. An allegation that a man was not duly sworn, is a simple allegation of a single fact, though that fact is made up of the circumstances of the use of the proper book, and the repetition of the proper form of oath. The same observation applies to the common allegation that a writ was or

was not duly endorsed for bail. In the *King v. Lyne Regis*,^d a return to a mandamus that a man was not duly elected and sworn, was held to be bad. Had it been that he was not duly elected, it would have been good, though the election is a matter that must necessarily consist of a great variety of circumstances. In that case it was distinctly stated, that, "if they had returned not duly elected, or admitted, or sworn, it might have been good." The allegation, not duly qualified, is therefore proper and the other part of the plea is mere inducement. Then as to the allegation of plaintiff not being duly qualified at the time when the action accrued, that may be referred to the time mentioned in the declaration; so that there is no uncertainty in that allegation.

Lord Denman, C. J.—I am of opinion that the plea is bad. In the first place, it seems to be clear that it is objectionable for duplicity. There is a statement in it of three distinct facts; yet all these three constitute but one matter. One of these things may be involved completely in the other. But when it is said that the plaintiff was not qualified and authorised to practise, it puts in issue a right or qualification depending on a variety of circumstances. Then with respect to the allegation of the want of qualification at the time of doing the work, the mode in which that objection to the plaintiff's right to recover is stated, seems to me bad. The declaration is partly for work and labour; then the plea is that he was not duly admitted at the time when the action accrued. We do not know when the action accrued; it might have been some time after the work was done, and that would not be an answer to the action. For if he had been qualified at the time of the work performed, he would not be disqualified by what occurred at a subsequent time. The plea, therefore, being clearly insufficient, there must be judgment for the plaintiff.

Per Cur.—Judgment for the plaintiff.
Williams, gent. v. Jones, gent., M.T. 1841.

Queen's Bench Practice Court.

OLD WARRANT OF ATTORNEY.—EXECUTION.— AFFIDAVIT.—OFFICE COPY.

Where an affidavit of the execution of a warrant of attorney has been filed pursuant to 3 Geo. 4, c. 39, ss. 1 & 2, in order to obtain judgment on it, it is sufficient to produce an office copy of the affidavit so filed.

In this case, a warrant of attorney had been given by the defendant, and regularly filed with an affidavit of its execution, pursuant to 3 Geo. 4, c. 39, ss. 1 & 2. The plaintiff being desirous of signing judgment, the usual affidavit was produced that the defendant had been seen alive within a reasonable time.

Overend now moved accordingly, but stated that he was unprepared with an affidavit of the

^a 6 Mee. & W. 269.

^c 1 Barn. & Ad. 15.

^b 9 Dowl. 314.

^d Doug. 79.

execution of the warrant, the original affidavit of the execution having been filed as above stated.

Putterson, J., said, that it was unnecessary to have an original affidavit of the execution of the warrant, if the plaintiff was provided with an office copy of the affidavit of execution which had been filed. One or the other must, however, be produced.

Rule refused.—*Bland v. Wilson, M. T. 1841. Q. B. P. C.*

OUTLAWRY.—PRISONER.—ESTOPPEL.—SCIRE FACIAS.

Notwithstanding the general rule is, that an outlaw cannot be heard in Court, except for the purpose of reversing the outlawry against him, he may, where he has been taken into custody on a writ, as it is suggested, wrongfully against him, he may be allowed to apply to obtain his discharge, and if the proceedings pursuant to which the defendant has been made a prisoner are irregular, the Court will discharge him.

In this case, the plaintiff obtained a judgment, more than a year previous to suing out an execution against the defendant, without reviving the judgment by a writ of *scire facias*. At the time of suing out the execution, he was an outlaw. The execution sued out, was against the person of the defendant, and he was accordingly arrested on a writ of *capias ad satisfaciendum*. After his arrest, the defendant obtained a rule to shew cause why he should not be discharged out of custody, on the ground ; first, that the plaintiff was an outlaw at the time of issuing execution ; and secondly, that no *scire facias* had been issued to revive the judgment.

Thomson, shewed cause against the rule, and produced an affidavit in which the defendant was shewn to be an outlaw. It was, therefore, objected, that as an outlaw could not be heard in Court, for the purpose of setting aside his outlawry, he could not be heard for the purpose of setting aside the plaintiff's proceedings. His proper course was previously to move to set aside the outlawry. Till he had done so, he was not in a situation to be heard.

Cresswell and *Martin* contended, that though the general rule was as stated, yet where the personal liberty of the defendant was concerned, his being an outlaw did not affect his right to apply for his discharge, if wrongfully detained.

Wightman, J., thought that distinction well founded, and that as it was quite clear the defendant could not be taken on such a writ of execution, as the judgment had not been revived, his being an outlaw did not prevent his applying for his discharge. The present rule for his discharge must be made absolute.

Rule absolute.—*Walker v. Thelluson, M. T. 1841. Q. B. P. C.*

Common Pleas.

PROMISSORY NOTE.—VARIANCE.

The plaintiff declared upon an instrument as a promissory note, which upon its production in evidence, appeared to be in the following form :—
" Six months after date, pay without acceptance to the order of I. C. F., 100l., value received."
The instrument was issued by the branch bank of a Joint Stock Banking Company, of which I. C. F. was managing director, and was signed by T. N. the manager, " For the Directors : " Held, that the instrument might be treated as a promissory note by the holder, and that there was no variance, therefore, between the proof and the declaration, within the 3 & 4 W. 4, c. 42, s. 23.

This was an action upon a promissory note. The cause was tried before *Tindal, C. J.*, at the sittings after Hilary Term, 1841. Upon the form of the instrument, it was objected on the part of the defendant, that it was mis-described in the declaration as a promissory note, for that it was, properly speaking, a bill of exchange ; but for the plaintiff it was urged that it was properly described, and that the learned Judge would amend the record under the 3 & 4 W. 4, c. 42, s. 23, if he should be of a contrary opinion : but that at all events, it was only an ambiguous instrument, which the plaintiff was entitled to treat either as a promissory note or a bill. The Judge directed a verdict for the plaintiff, for 104l. 18s., giving the defendant leave to move to enter a nonsuit. A rule nisi having been obtained accordingly.

Sir T. Wilde, now shewed cause. He urged that the instrument was in reality a promissory note, being drawn by the authority of the directors on themselves : but at all events, if it was an ambiguous instrument, *Edis v. Bury*, 6 B. & C. 433 ; 9 Dowl. & Ry. 492 ; 2 Car. & P. 559, S. C. : and *Block v. Bell*, 1 Mo. & Rob. 149, shewed that the holder might treat it either as a bill or note.

Mr. Serjt. Channell, *contra*, cited *Reg. v. Kinner*, 2 Moo. & Rob. 117, contending that the instrument was in reality a bill, and that the Court could not amend the record to meet the case, without altering its whole scope and effect, against the meaning of the statute.

Tindal, C. J.—The directors for whom this instrument was drawn by Newham, their servant, were part of the Joint Stock Company, by which it is made payable. That company is not a corporation, but consists of various private individuals, and the instrument on the face of it appears to be drawn on behalf of the partnership, purporting that a certain sum shall be paid by them at a certain place, and is virtually a promissory note. There was only one fund out of which it was payable, and there is an absence of the two parties necessary to render it a bill of exchange, and the only alternative is, that it is a promissory note. The rule therefore must be discharged.

Colman, Erskine, and Maule, J.J., concurred.

Rule discharged.—*Miller v. Thompson, M. T. 1841. C. P.*

ORDER OF REFERENCE.—ENLARGEMENT OF TIME FOR MAKING AWARD.

Where the order of reference, dated May 1829, directed the arbitrator "to enlarge the time to the 2nd Nov. 1841, or to such other or ulterior day, as the said arbitrator shall ultimately appoint and signify in writing under his hand, to be indorsed on the said order of reference," and the arbitrator made his award in October, 1841, having indorsed no enlargement of the time on the order of reference: Held, that the award was good, and that no indorsement of any enlargement of time up to 2nd November 1841, was necessary.

The order of reference bore date the 16th May, 1839, and authorised the arbitrator to enlarge the time for making his award "to the 2nd November 1841, or to such other or ulterior day as the said arbitrator shall ultimately appoint and signify in writing under his hand to be indorsed on the said order of reference." The award was made in October 1841, after the time originally appointed for making the award had expired, and no enlargement of time was indorsed on the order of reference.

Mr. Serjt. Channell, having obtained a rule nisi for setting aside the award on the ground that the enlargements up to October 1841, ought to have been indorsed on the order of reference,

Sir T Wilde, Serjt., shewed cause.

Per Curiam.—The terms of the order of reference are plain, and only require the enlargements made subsequently to the 2nd November 1841, to be indorsed on the order of reference.

Rule discharged.—*Davison v. Gauntlet and another*, M. T. 1841. C. P.

Exchequer of Pleas.

Sittings in and after Hilary Term, 1842.

In Term.

MIDDLESEX.

1st Sitting, Wednesday, Jan. 12th
2nd Sitting, Thursday, Jan. 20th
3rd Sitting, Friday, Jan. 28th
By adjournment, Jan. 29th

LONDON.

1st Sitting, Tuesday, Jan. 18th
2nd Sitting, Wednesday, Jan. 26th
By adjournment Jan. 27th

After Term.

Tuesday, Feb. 1st | Wednesday Feb. 2nd
(To adjourn only)

The Court will sit at ten o'clock.

The first and second Sittings in Middlesex will be continued from day to day, by adjournment, until the causes entered for those Sittings respectively are disposed of.

THE EDITOR'S LETTER BOX.

I. M. G., who says he "happened promiscuously to take up a book at the Law Institution," had better make his complaint to the author he mentions. The dates of publication, however, will shew the alleged unfairness to be impossible.

The Articled Clerks' Manual is the result of the joint labour of three or four writers, and not of the one mentioned.

M. A., in answer to the question of "Viator," (p. 128,) imagines that the majority of the passengers would have the controul of the windows.

"A Chancery Solicitor," in reference to the Commission lately issued by the Right Honourable the Lord Chancellor to the Master of the Rolls and other eminent persons, to make inquiries into the present practice of the Court, with a view to its amendment, states that the late Lord Chancellor, was, no doubt, very desirous to benefit the public by the fifty-one Orders issued on the 26th August last, but our correspondent submits, that before alterations so extensive as those contemplated were actually carried into effect, the members of the profession should have been consulted, and with all due respect to the Equity Judges, he submits that the solicitors of London, are far more competent than any one else, to frame rules for the regulation of Chancery Practice.

"An Attorney," who omitted to renew his annual certificate, on or before the 16th Dec., and who from that time, and for a few months thenceforward placed all his business in the hands of his agent, to be conducted in his (the agent's) name only, would not be subject to penalties, if he received no share of the profit of the practice. He must be re-admitted before he can take out his certificate again. The certificate duty is, no doubt, a most oppressive and grievous burden to a young practitioner.

It is clear, that "One, &c.," must be re-admitted, not having renewed his certificate for more than a year.

The letters of "A Young Solicitor"; "One Recently Admitted"; I. C. C.; "Discipulus"; and "Lex"; have been received.

The writer mentioned by "Scrutator," we suppose, has a right to make what use he pleases of his own.

Our Correspondence has, of late, largely increased, and in order to avoid some part of the delay which might otherwise occur, we purpose noticing all the short communications as part of the contents of our "Letter Box." We hope our friends will excuse this brief method of acknowledgment.

The Legal Observer.

MONTHLY RECORD FOR DECEMBER, 1841.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

SUMMARY OF RECENT DECISIONS.

FROM the commencement of the present Volume, it will be observed, that we have largely increased the number of our Reports of Cases decided in the Superior Courts. We have been assisted in effecting this improvement by the kindness of our Reporters, who have condensed their statements as much as possible. We have now the advantage of the co-operation of seven Gentlemen of the Bar in various departments of the Work; and it will be seen, we trust, that whilst improving and extending our original Reports, we have not neglected the Communications of other Contributors and Correspondents belonging to both branches of the Profession. We have thus noticed not only the most important topics of the existing Law, but all the projected alterations therein, and especially the changes in the Practice and Proceedings in Chancery.

It may be a useful addition to our plan, to collect at short intervals, in a classified form, the principal Points of Law and Practice which have been recently decided,—thus *posting up* (as it were) the Law from the *Journal* to the Professional *Ledger*. For the present we select the following cases under *two* of the heads, which will probably interest a considerable class of our readers.

COMMON LAW PRACTICE.

Notice of Action.—Where a statute gives a magistrate the right to a notice of action, the mere fact that he has tendered amends will not dispense with the necessity of proving the notice. (Q. B. in Banc.) *Martin v. Uppcher*, 23 L. O. 28; and see *Cole v. Bank of England*, 2 P. & D. 521.

Arrest.—Where there has been an arrest in one Court upon a *capias* issued under the authority of the 18th section of 1 & 2 Vict. c. 110, and where there have been detainers on writs issued by other Courts, the defendant must, if he thinks such arrest illegal, apply in the first instance to the Court out of which the writ whereby he was arrested issued. This Court will not, in a proceeding on one of the detainers, entertain the question of the legality of the first writ. (Q. B. in Banc.) *Wright v. Sandford*, 23 L. O. 9.

Distringas to compel appearance.—The affidavit in support of a motion for a *distringas*, must not only state the proper number of calls and appointments to have been made at the defendant's house, but also where the house is situated. (C. P.) *Anon.* 23 L. O. 63.

Money in Court.—The defendant was arrested for 1000*l.*, which sum was deposited in Court in lieu of bail. The cause and all matters in difference were referred, and the arbitrator found the defendant to be indebted to the plaintiff in 666*l.* 2*s.* 10*d.* in respect of the cause, and in 1079*l.* in respect of other matters in difference. The Court, upon motion by the plaintiff, ordered the sum of 666*l.* 2*s.* 10*d.*, to be paid out of Court to him, but refused to make it a part of the same rule that the residue should be handed over to the defendant. (*Wrightman, J.*) *Fowle v. Steinkeller*, 23 L. O. 32.

Service in Ejectment.—1. Service on the widow of the late tenant, who held the premises by lease, who is administratrix of her deceased husband, and to whom it is sworn that it is believed that the interest of the deceased passed, and also upon the person in possession of the premises, is sufficient to entitle the lessor of the plaintiff to judgment against the casual ejector in an action of ejectment for a forfeiture. (C. P.) *Doe d. Pamphilon v. Roe*, 23 L. O. 62.

2. If a declaration in ejectment has been served on a woman professing to be the tenant's wife, on the premises, it is sufficient for judgment against the casual ejector, if it is believed that her statement is true. (*Patterson, J.*) *Doe d. Grange v. Roe*, 23 L. O. 62.

3. In an action of ejectment, the service of the declaration on an agent of the tenant in

possession, the latter being abroad, was held to be sufficient for a rule *nisi*. (*Patteson, J.*) *Doe d. Fieldhouse*, 23 L. O. 45.

Paper Books.—The Court will not allow one party to take a case out of its regular turn, and pray judgment under the rule H. T. 4 W. 4, No. 7, unless he has strictly followed the words of that rule. (*Q. B. in Banc.*) *Anonymous*, 23 L. O. 61. [The rule requires that in case of default by either party (in delivering the paper books for argument), the other party may on the day following deliver such copies.]

Rule Nisi.—It is discretionary with the Court whether, in a case where a counsel appears to shew cause against a rule *nisi* without office copies of the affidavits on which the rule has been obtained, time shall be given to procure such office copies. (*Wightman, J.*) *Ex parte Rogers*, 23 L. O. 46.

2. The Court will not enforce a compliance with the ordinary terms imposed on a party moving for the enlargement of a rule *nisi* that he shall file his affidavits in answer, a certain time previously to shewing cause, in a case where the necessity for the enlargement has arisen from the neglect of the party by whom the rule was obtained, in delaying the service of it so late, as to render it impossible to shew cause according to its exigency. (*Q. B. Practice Court.*) *Regina v. Anderson*, 23 L. O. 46.

Rule to compute.—The affidavit in support of an application for a rule to compute principal and interest on a bill of exchange, need not in the C. P., state the amount of the bill, the affidavit itself in that Court being unnecessary. *Bridport v. Jones*, 23 L. O. 62.

Writ of Trial.—1. Where a writ of trial was returnable on the 27th of July, and the trial was begun on that day, and continued all day, and terminated at ten minutes before twelve o'clock at night, when the jury retired, and the verdict was not given until half past twelve, this Court refused to set aside the proceedings for irregularity. (*Q. B. in Banc.*) *Pettier v. Booth*, 23 L. O. 43; and see *Mortimer v. Preedy*, 3 M. & W. 602.

2. A Judge has power to send a cause to be tried by a borough jury, though the venue is laid in the country. What is a waiver of a defective notice of trial. (*Excheq.*) *Farmer v. Mumford*, 23 L. O. 63.

Warrant of Attorney.—If a rule *nisi* only is required for judgment on an old warrant of attorney, it being above ten years old, the Court will allow a rule to be granted, although nearly three months have elapsed since the defendant was seen alive. (*Patteson, J.*) *Anon.* 23 L. O. 45.

2. On a warrant of attorney empowering the plaintiff to enter up judgment at his own suit, or that of his executors or administrators against the defendant, his executors or administrators; judgment may be entered up at the instance of a surviving executor of the plaintiff against an executor of the defendant. (*Patteson, J.*) *Fellowes v. Bradbury*, 23 L. O. 45.

Prohibition.—A proceeding against an eccle-

siastical person tending to deprivation, must be taken according to the mode prescribed by the 3 & 4 Vict. c. 86. Where, therefore, the Archbishop of York, on his visitation by his commissary, received in answer to some of his visitatorial articles, a letter from one of his clergy, charging the Dean of York with simony, and proceeded as under the visitation, and in that character alone, to a sentence of deprivation, this Court granted a prohibition. The prohibition in such case, lies after sentence where the commissary's court has merely adjourned. *Quære*, whether it would lie, if the commissary had dissolved his Court? *In re The Archbishop of York and Dr. Phillimore*, 23 L. O. 10; See *Baker v. Rogers*, Cro. Eliz. 788; *Smith v. Shelburn*, *id.* 685; *Walrond v. Pollard*, 3 Dyer, 272 b; *Bishop of St. David*, 1 Lord Raym. 447, 539; 1 Salk. 134; *Phillips v. Bury*, Lord Raym. 5; Show. Parl. Ca. 35; *Bishop of Kildare v. Archbishop of Dublin*, 2 Br. P. C. 179.

Capias ad satisfaciendum.—The 18th sec. of the 1 & 2 Vic. c. 110, which provides, that decrees and orders of Courts of Equity, &c., shall have the effect of judgments, does not authorize the issuing of a writ of *ca. sa.* out of the Common Pleas, upon an order of Chancery; but a writ of *ca. sa.* having been so issued out, the Court will set it aside, and compel the opposite party to pay costs. Where an application was made in Michaelmas Term for setting aside such a writ with costs, the Court refused to grant a rule absolute in the first instance, the prisoner having been in custody since the previous 27th September, without applying to a judge at chambers for his discharge, and on making the rule absolute, ingrafted on it the term that the prisoner should bring no action. (C. P.) *Ex parte John Stamford*, 23 L. O. 47.

Evidence.—Where the defendant pleaded specially to a count on a bill of exchange, and that plea was demurred to, and the judgment given for the plaintiff: Held, that on going down to trial on the rest of the record, the plaintiff was not bound to produce the bill, but might without its production recover the amount claimed in the declaration. (*Q. B. in Banc.*) *Lane v. Mullins*, 23 L. O. 61; and see *Marshall v. Griffin*, Moo. & Ry. 41; *Snouden v. Thomas*, 2 W. Bl. 748.

Certiorari.—Where an indictment is removed by *certiorari* from the quarter sessions into the Queen's Bench, and an objection is made by the defendant that his name is not that by which he is described in the indictment, and an affidavit to that effect is made by him, the Court will direct the indictment to be amended accordingly, pursuant to 7 Geo. 4, c. 64, s. 19. (*Patteson, J.*) *Reg. v. Lach*, 23 L. O. 45.

LAW OF ATTORNEYS.

Re-admission.—1. If an attorney has omitted to take out his certificate, in consequence of the negligence of his agent, he may be re-admitted although he practised during the certificated period, without fine, on payment

of the duty due on the certificate omitted to be taken out, and without the usual notices. (*Patteson, J.*) *Anon.* 23 L. O. 62.

2. An attorney having been duly admitted in 1799 in the C. P., continued to practise up to 1841, under a belief that his certificate had been duly renewed by his son, also an attorney, who acted as his agent in London, to whom he annually sent the requisite funds. On the last day of Trinity Term, in the last-named year, it was ascertained that his certificate had not been taken out for 1832, 1834, and 1836. The son of the attorney was then dead. The Court of C. P. allowed the attorney to be re-admitted in M. T., without the usual notice, on payment of 24l., the arrears of duty, and a nominal fine of 6s. 8d. *Ex parte Robert Dawson Lee*, 23 L. O. 46.

Arrest.—An attorney who is about to quit England, is liable to be arrested pursuant to 1 & 2 Vict. c. 110, s. 3, notwithstanding his privilege. (*Patteson, J.*) *Thompson v. Moore*, 23 L. O. 12.

Tenant in Ejectment.—The Court will grant a rule for judgment against the casual ejector, where the tenant in possession, on whom service has been effected, is an attorney, although the nature and meaning of the proceedings were not explained to him. (C. P.) *Doe v. Duke of Portland v. Roe*, 23 L. O. 47.

Notice of admission.—The Court permitted an articled clerk to make his required entry in the Master's book on the first day of term, it not having been entered in due time by one day, in consequence of a mistake of the clerk of the London agent. (*Patteson, J.*) *Ex parte Griffin*, 23 L. O. 12.

THE SIX CLERKS AND SWORN CLERKS.

THE proposed abolition of the Six Clerks' Office renders it desirable to lay before our readers a statement of its origin, constitution, and progress. A writer in the Cyclopædia of the Society for the Diffusion of Knowledge (whose able pen we recognize), has given a history of the Six Clerks, the Sworn Clerks, and Waiting Clerks, and with some curtailment, we avail ourselves of his labors.

First, of the *Six* (now reduced to five).

"The office of *Six Clerks* is an office of great antiquity connected with the Court of Chancery, probably as ancient as the Court itself. The number of the Six Clerks was limited to six as long ago as the 12th Rich. II. The history of this office illustrates the mischief of attempting to regulate the supply of legal services to the client. It exhibits an instance of the principles of interference and monopoly, destroying two successive classes of officers, in spite of the strongest support which the law and the courts could give to them.

"The Six Clerks were originally the only attorneys of the Court. By the common law, any person who was impleaded in any of the courts of law, was bound to appear in person, unless he obtained the king's warrant, or a writ from Chancery enabling him to appear by attorney, 'by reason whereof,' says Lord Coke (1 Inst., 128), 'there were but few suits.' There are many early statutes still in force, enacted for the purpose of empowering the subject to appoint an attorney. The earliest statute is that of Merton (A.D. 1235), whereby it is 'provided and granted that every freeman which oweth suit to the county, tithing, hundred, and wapentake, or to the court of his lord, may freely make his attorney to do those suits for him.' Subsequent acts extended this privilege to other parties and other courts; but to this day it would appear that by the strict law of the land, except so far as it has fallen into desuetude, persons in good health, in pleas relating to money, are bound to appear in person. None of these statutes however extended to Courts of Equity, but, as far as appears, every person who was desirous of relief, or compelled to defend himself in the Court of Chancery, was obliged to employ one of the Six Clerks as his representative.

The increase of litigation which accompanied the increase of property was looked on as an evil to be checked in every possible method; and the method most relied on was that of limiting the number of legal practitioners. The well-known statute of 1455 (33 Hen. VI., c. 7., which is still in force) may be referred to as an instance. It recites a practice of contentious attorneys to stir up suits for their private profits, and enacts that there shall be but six common attorneys in Norfolk, six in Suffolk, and two in Norwich, to be elected and admitted by the Chief Justice. In 1564 a rule was made by the Court of Common Pleas that every attorney of that Court 'should satisfie himself with the suite in the same, and forbear to be towards any causes as plaintiff in any other the Queen's Majestie's Courts here at Westminster.' As late as the year 1616 a rule was made, 'that the number of attorneys of each Court be viewed, to have them drawn to a competent number in each Court, and the superfluous number to be removed.' These various regulations, so far as they were enforced, could only have been detrimental to the public; and as regards the Courts of King's Bench and Common Pleas, they seem not to have been long insisted on. As to the Exchequer, the principle of monopoly was continued in force down to the year 1830, until which time eighteen attorneys only were admitted to practise in it. As a consequence, that Court was, before the year 1830, scarcely at all resorted to. Since that time, more actions are commenced in it than in any other Court."

Next, of the *Sworn Clerks*.

"It appears that the Six Clerks admitted *under-clerks*, afterwards called *Sworn Clerks*, to practise in their names, and they shared in

ome way or other the profits with them. In 1548 an inquisition was appointed to inquire into the supposed exactions and abuses of the Court of Chancery, and the fees then payable for the business of this office. A copy of their presentment was printed by order of the House of Commons, 8th February, 1831. It shows that all the fees payable for business done in this office, were at that time payable to the Six Clerks; and it contains no allusion whatever to the under-clerks as being in any way known as officers of the Court. They seem, at that time, to have held a position with regard to the Six Clerks, quite analogous to that the solicitors for a long period were under with regard to the Sworn Clerks, and to have been the real persons who prosecuted the causes. They must have been numerous, as in 1596 an order was made limiting the number that each Six-Clerk should be allowed to have under him. Soon after this, the Six Clerks, instead of taking clients according to the client's choice, agreed to divide the business coming from time to time into Court, among themselves alphabetically. This arrangement shows that the scheme of a limited number of legalised attorneys for the Court of Chancery had now entirely ceased to operate, and had been converted into a mere legal pretext to enable these officers to tax all who were driven to such Chancery Court for justice. This regulation for dividing the business was, after some years, set aside on petition of the Master of the Rolls to the Crown, as a monopoly and a breach of the liberty of the subject. In 1630, the office of Six-Clerk was, if not a sinecure, at least an appointment of great value. About this time, the Under or Sworn Clerks, or *Clerks in Court* (for all these names apply to them,) began to be frequently mentioned in the orders regulating the Court, and soon grew into a very important body. The under-clerks were the parties who knew the merits of the different causes, and were interested in getting the work done, so as to gain the fees from the clients. The Six Clerks had begun to sink into the lethargy of sinecurists. Many orders were made to spur them into activity, but all in vain.

"The following may be instanced—the 10th of Lord Coventry's orders (1635): 'The Six Clerks, who are the only attorneys of this Court, ought to inform themselves continually of the state and proceeding of their client's causes, whereby they may be able to defend their clients, and to give account to the Court, as the attorneys in all other Courts do, and not leave the care and knowledge thereof upon their under-clerks, who attend not in Court; and the clients, and such as follow their cause, are to acquaint their attorneys for that purpose.' Order of 1650: 'Whereas only Mr. Hales, one of the Six Clerks of this Court, gave his attendance this morning at the sitting of the Court, at the entering into the hearing of the cause wherein Kitchen is plaintiff against Meredith defendant, and the rest of the Six Clerks made default: it is, therefore, this present day ordered, that such of the Six Clerks who so

made default of their attendance and service to this Court, at the beginning of that cause, be fined ten shillings a-piece to the poor, and the usher of the Court is to receive the same to the use aforesaid.'

"By an order of Lord Clarendon, of 1665, made 'On taking into considerable the manifold disorders and undue practices which of the late times have crept into the Six Clerks' Office, to the great dishonour of this Court, the obstruction of justice, and the damage of the client,' the alphabetical division was re-enacted. 'And because it is very manifest that these misdemeanors and enormities are gotten into the office of the Six Clerks, by the liberty and licence which the inferior clerks have of late assumed to themselves,' the numbers were to be limited to twelve under-clerks to each Six-Clerk. In orders about this time, the under-clerks are sometimes referred to incidentally as the 'attorneys of the parties,' though it is strongly repeated that 'the Six Clerks are the only attorneys of this Court.' In 1688 the Six Clerks submitted to their fate; an order was made fully recognizing the under-clerks, and dividing the office-fees between them and the Six Clerks. The Six Clerks, having secured their own monopoly, had, by the year 1668, become the aggressors, and had schemed to increase their income by admitting other persons, as well as the sworn or under-clerks, to practise in their names. Before 1693, the under-clerks had obtained the privilege of filling up all the vacancies in the office, by taking articulated clerks themselves. From this time the office of Six-Clerk has become a complete sinecure, and the Six Clerks are only mentioned in the Court's annals with respect to the fees that they are entitled to demand from suitors, as door-keepers, as it were, to the Court. Their business, such as it is, for a long time has been managed by one or two private clerks, employed as clerks to the whole body of Six Clerks; and the Six Clerks have signed the necessary documents for each other, each being at the offices for two months only in the year. The office is virtually abolished by the Act 3 & 4 Wm. IV., c. 94, s. 28, which enacts that vacancies shall not be filled up till the number of Six Clerks is reduced to two.

"Nearly the same story has to be told over again with reference to the Sworn Clerks. For a long time these under-clerks were the principal solicitors of the Court; and until the middle of the last century the chief business of the Court was transacted by them without the intervention of a solicitor. The same principle of monopoly has with them led to nearly the results that it did with their titular superiors. A vested right to fees in the various stages of equity proceedings, brought about an inattention to business, which has led to the transfer of the prosecution of suits to the solicitors.

We come next to the *Waiting Clerks*.—

"In 1693, a new half official character was given to the articulated clerks of the under-clerks. They were legalised under the name of 'Wait-

ing Clerks.' This new body soon began, as the following extract from an order of the Master of the Rolls of 1693 will show, to imitate towards their own masters the insolence which the Sworn Clerks had, thirty years before, shown to their superiors, the Six Clerks:—
 'Whereas complaint hath been made by the petition of the Sworn Clerks of this Court to the Right Hon. the Master of the Rolls, that divers of their under-clerks have of late behaved themselves after a bold, insolent, rude, and disorderly manner in the Six Clerks' Office, as well towards their respective masters as to others the Sworn Clerks, and to the suitors of the Court attending the dispatch of their business there, by unmannerly and abusive language, breaking of windows, cutting desks, breaking down seats, throwing stones and other things at the said Sworn Clerks and their clients, whereby, and by making rude and indecent noises, they often forced them to leave the said office, and caused the same to be shut up in the most usual time of business, and when the Court hath been sitting, to the great scandal thereof, and damage of the said Sworn Clerks and their clients, and contrary to the duty of the said under-clerks, and the antient and laudable usage of the said office: and whereas complaint hath been likewise made to his Honor, by petition of the under-clerks, that the Six Clerks do take and employ persons to be their waiting-clerks, who have not been articulated clerks, or ever educated and employed in the said office; and that several of the Sworn Clerks have, and do not only take more than one articulated clerk, which they, by the rules and orders of the said Court for the government of the said office, ought not to do, but do likewise carry the records out of the said office, and cause the same to be copied at under-rates by persons out of the office, rather than to allow to their under-clerks their due fees for copying thereof.' It was accordingly, amongst other things, ordered 'that no under-clerk in the said office shall from henceforth during the time of his clerkship presume to wear any sword, either in or out of the said office, within the cities of London and Westminster, or the liberties thereof; or to be covered, or wear his hat in the said office, in the presence of any one of the Sworn Clerks; but that all the said under-clerks shall, during all the time of their respective clerkships, as well in their masters' seats as elsewhere in the said office, be uncovered, and behave themselves orderly, soberly, and with respect towards all the said Sworn Clerks and suitors of the said Court; and in case any of the said under-clerks shall be idle in the said office, out of their masters' seats, they shall, upon the admonition or command of any of the said Sworn Clerks, immediately repair to their masters' seats, and quietly sit and attend their business there, from seven of the clock in morning in summer, and eight in the winter, till twelve of the clock at noon, and from two of the clock in the afternoon until such time at night as their respective masters shall think fit.'"

Finally we come to the *Agents* of the Sworn Clerks:—

"These are a class of workers of a semi-official character, even now not recognised by the Court. These gentlemen really now perform almost all the remaining duties of the office which the solicitor has left to it, except taxing the costs; and are paid (it would appear illegally) by some share of the fees received. After so many successive attempts by the Court to have each successive class of officers do their duty in person, it is at last in the main done by gentlemen who are mere private persons, hold no official situation, and are liable, in point of law, to be turned away at any moment.

"An effort was made on the occasion of the Chancery Commission of 1825, by several eminent solicitors, to get the offices of Six-Clerk and Clerk in Court abolished. It was broadly stated in evidence by a solicitor of celebrity, that Mr. S. (a gentleman whose mind had failed him) was 'quite as good a Clerk in Court after he was a lunatic'; and the expense of the office to the suitor was insisted on. The commission stated they saw no reason to interfere with these offices; and they have remained to the present day. It is now however condemned by the unanimous voice of the whole profession, and its fall may be shortly expected. At present, the client has still to use the Six-Clerk's name as his attorney. He therefore pays his own solicitor for his services; he pays a Clerk in Court (and his partner, the real working agent) for letting the solicitor get, in his name, to the Six-Clerk for liberty to use the Six-Clerks name, and he pays the Six-Clerk for this liberty also. It is mainly to the existence of such legal abuses as have here been pointed out, that we must look to account for the astonishing fact that more suitors annually applied to the Court of Chancery for aid 100 years ago than do now. So little does personal talent affect the office of Clerk in Court, that an executor of a Clerk in Court can sell the practice of his testator to another Clerk in Court, almost with a certainty that not a client will be lost, however mean may be the talents of the purchaser."

LAW OF LIBEL.

THE COMMISSIONERS' PROPOSED ALTERATIONS.

THE Criminal Law Commissioners, acting on the grounds stated in their report on this subject, and the principal parts of which we have laid before our readers, recommend the following alterations in the law:—

"We recommend that in respect of personal libels, two distinct classes of offences should be constituted. That one of these should be founded on the general principle of protection to private reputation against such defamatory imputations as are *false* as well as malicious. That the second should be founded on the principle already estab-

lished of protection to the public peace by preventing the publication of libels on private persons, tending to the disturbance of the peace.

"That in respect of the former class, the truth of the matter published, when it either directly or by implication contained a charge of misconduct, should be a bar to the prosecution. That in cases within the latter class, the truth of the matter published should in no case be available by way of defence to the publisher of the libel.

"But that in either case, and generally, evidence of the truth or falsity of the matter published should be admissible where the occasion of the publication was a privileged one, such as legally to raise the question as to the actual intention of the defendant whether he acted *bonâ fide* in reference to the particular occasion, or with an actually malicious intention independently of the occasion.

"That none but a party defamed, or some other person with his consent, should be allowed to prosecute for the publication of a libel alleged to be false.

"The grounds for these suggestions have already been adverted to. As regards the first, it has already been observed that the present avowed foundation of the Criminal Law in the case of personal libels is too narrow, as being confined in its object, principally, if not solely, to the protection of the public peace; we think that it ought to be extended to the protection of reputation as a valuable private possession, against a malicious injury, the remedy afforded by a civil action to recover damages being wholly inadequate to afford the protection which is necessary.

"The natural consequence of such an extension of the law is the commensurate admission of the truth of the alleged libel by way of justification; the extension is founded on the notion of injury to private character, and no such injury exists, at least none such as requires restraint by the Criminal Law with a view to protect character, where the imputation is true, although it may still be necessary that such libels should be restrained, *sub modo*, for a different purpose, viz., the protection of the public peace. The truth of the matter published ought, therefore, to be a bar where the publication within the first of the above classes is alleged to be *false* as well as malicious. A different rule in respect of libels held to be criminal on the principle of protection to reputation, would be inconsistent with the law which provides a civil remedy for such an injury; that law denies the remedy where the imputation is true, either because no injury is sustained, or because it would be contrary to sound policy to award a remedy in such instances, according to the celebrated response, *Peccata nocentium nota esse et oportere et expetere*. These principles, whether they ought to prevail separately or conjunctively, apply equally to protection through the medium of penal restraint.

"We see no objection in such cases, and so far as concerns personal libels, to allow the

truth to be a bar, as in the case of a civil action.

"Where the contents of the libel are not alleged to be false, but it is written with intent to provoke another to commit a breach of the peace, or where its terms are such as naturally and immediately tend to a breach of the public peace, it seems to us that the truth of the contents of the libel ought not to constitute a bar to the indictment. This stands on the principle recognised by the present law—it is essential to public peace and tranquillity to prevent their disturbance by the unnecessary publication even of that which is true: truth itself ought not to be made use of as a colour and pretence for wreaking private malice and producing public discord.

"Again, it seems to us that in all cases where, on its being admitted or proved that the party published the alleged libel on some occasion or under circumstances recognized by the law as affording a qualified justification, dependent on the question whether he acted honestly and *bonâ fide*, in reference to the occasion, or *mala fide*, and out of mere malice, the truth or falsity of the alleged libel ought to be admitted in evidence, the better to enable the jury to decide on the real motives and intention of the party. It is, we think, plainly inconsistent that in the first place the innocence or guilt of the party charged with libel should be made to depend on the actual disposition of mind and intention at the time of publication, and yet that one of the best and surest tests for deciding that fact should be withheld from the consideration of the jury. It is obvious that to exclude such evidence must often occasion the conviction of the innocent, and still more frequently the acquittal of the guilty; no evidence can possibly be more cogent to show that the party was acting *mala fide* than the fact that he knew that the injurious matter published was false.

"These provisions, we may observe, seem to unite, so far as union is practicable, the ancient with the modern law in respect of personal libels, and at the same time remove an unseemly anomaly to the general rules and principles of the law of evidence.

"*Provision for protecting the editor of a newspaper, &c., who discloses the name of the author and publisher without actual malice.*—We further recommend that it should be competent to any person responsible as editor, publisher, or otherwise, of any newspaper or other periodical work, either before or after any prosecution commenced against him in respect of any personal libel contained in such work, to disclose to the party libelled the name of the author of the libel, and to supply him with such evidence as may be sufficient to prove the fact, and in case such disclosure shall be made and proof be given after such prosecution commenced, then to pay or tender to the prosecutor the costs of the prosecution then incurred; and that if such prosecutor shall, after such disclosure made and evidence supplied, and in case such disclosure be not made and evidence supplied before the

commencement of the prosecution, also after tender of such expenses, proceed with the prosecution, the defendant on proof of those facts, shall be entitled to an acquittal, unless the prosecutor shall prove that the defendant published out of actual malice. And that in case the prosecution shall be forborne or suspended by such prosecutor, and he shall by the means of the evidence supplied prosecute the author, whose name shall have been disclosed, the party so having disclosed the author's name shall not be liable to any prosecution, none having been commenced at the time of such disclosure or information, or to any further prosecution, in case of a prosecution suspended as aforesaid, unless the disclosure made and evidence supplied shall be insufficient to occasion the conviction of the party whose name shall have been so disclosed. And that, in case of failure from the insufficiency of the evidence so supplied, the prosecutor shall be entitled to commence a prosecution, or to continue a prosecution already commenced against such original publisher, and to recover from him the costs of such ineffectual prosecution.

"We found this recommendation upon the following grounds:—

"It very frequently happens that a party responsible, or the editor or publisher of a newspaper or periodical work containing news, may, through inadvertence, without any malicious motive, publish libellous matter. The injurious quality of the libel may frequently depend on circumstances to which he is an entire stranger. In such cases it is obviously politic that the real author of the calumny should be made responsible for his misconduct, and that the instrument of publication, against whom no charge of personal ill-will or malice is made, should not be further amenable. On the other hand, where the party so responsible was himself actuated by malicious feeling in publishing the libel, he ought not, we conceive to be allowed to discharge himself merely by disclosing the name and furnishing the means of convicting an ostensible author of the libel; there would be danger of collusion, and a publisher actuated by malicious motives in propagating the calumny suggested by another ought, we think, to be dealt with as a principal in effecting the injury.

"Some recommendations of minor importance will be found in the Digest and notes. It will be observed, that the above suggestions are confined to personal libels. To what extent the truth is material upon a charge of a political libel on the administration of the government, reflecting on the conduct or measures of public functionaries, is a question of importance, which properly belongs to the class of offences against the state. Such libels consist more usually in intemperate and inflammatory comments, than on any false allegation of facts. Mere assertions as to public measures which are false in point of fact, can seldom be of any real importance; all such acts are usually of public notoriety, and false statements are easily contradicted and refuted

by means of the public press. It appears to us, however, that, independently of any considerations of this nature, proof of the truth of any such allegation ought not to be allowed to operate in bar of any charge of such an offence; for, although the fact be true, the publisher may still be guilty of a malevolent intention to injure society by defaming the government. The truth, we think, ought no more to be allowed to operate as a complete defence in such a case, than when a personal libel is published with intent to provoke the party reflected on to a breach of the peace. The question, however, whether on a charge for a political libel, evidence of the truth ought to be admitted, with a view to negative a material fact of the charge, viz., the intention to bring the government into hatred or contempt, is one of a different nature: the truth ought, we think, for that purpose and that only, to be admitted. Prosecutions, however, for such libels are, as we have observed, more usually founded on violent language and comments than upon any mis-statements of facts. The question whether such remarks are made in a seditious and malicious spirit for the purpose of defaming the government, or are made *bona fide* in the exercise of that right to discuss and criticise the conduct and measures of public functionaries, which is the undoubted privilege of the subject, does not admit of proof by evidence as a matter of fact. We may further observe in this place, that the question whether the truth in such cases shall be admitted to the limited extent stated in proof of the *animus*, does not alter or qualify the definition of the offence, but is more properly a question of evidence to be considered under the head of procedure.

"*Criminal information.*—The subject of proceeding by criminal information will more properly fall under the head of process. We may here however observe that this course of proceeding seems at all events to call for some modification. We think that if the prosecutor be allowed to state the falsity of the imputation as a ground for the application, the defendant ought to be allowed to give evidence upon the trial of the truth of the alleged defamation. We think also that if this mode of proceeding be productive of peculiar advantages, it ought to be rendered more generally available.

"After having attentively considered the grounds upon which the criminal law of libel at present stands, and traced the causes which have given rise to objections against that law, and having submitted what appears to us to be the most expedient course for obviating those objections and removing existing prejudices, we deem it to be proper to state, on the other hand, such objections as suggest themselves to us against any deviation from the present rules and practice of the law of libel. We do this for the purpose of drawing attention to every view of the subject which occurs to us, and also for the purpose of inviting and procuring, so far as we are able, such critical remarks from experienced persons as may

serve either to confirm us in our own views, or as may suggest something more desirable, or show that the present state of the law on this subject is such as to require no alteration. The main distinction which we propose is this, viz., to constitute two classes of offences as regards personal libels—the one founded on the principle recognized by the existing law—the preservation of the public peace, the other on a principle of protection to reputation analogous to that of securing property, or any other valuable right, from malicious injury. It would be a necessary consequence of this distinction that the truth of the alleged libel could not be admitted as a bar to the former charge, but ought to be so admitted in answer to the latter. It may be objected that if this were so, it would rarely happen that any one whose character had been assailed would prosecute for a libel within the first class, as merely tending to a breach of the peace. For if the imputation contained in the libel were false, the aggrieved party would of course endeavour to vindicate his reputation by giving the aggressor the opportunity of proving it to be true—he would therefore proceed against him for having published a false libel. If, on the other hand, the imputation were true, still the party reflected on would be little likely to prosecute merely for the endeavour to excite to a breach of the peace, such a course would naturally be construed into an admission that the charge was true, and it would be inferred that he dared not venture to challenge inquiry upon the subject. It must be admitted that this would be the probable consequence. What degree of importance is to be attached to that consequence is another question. As regards the party really guilty of the imputation, the objection is weak: being guilty he can have no real claim to protection in respect of character, and were he really placed in a situation of hardship or difficulty, yet as that would be a consequence of his own delinquency, it could afford no reason for withholding protection to those whose characters deserved it. As concerns the public, the consideration would be of little importance; although the party reflected on declined to prosecute, any other person would be at liberty to do so were it necessary, with a view to the interests of the public; and it is probable that the public would derive greater benefit from the exposure of delinquency, than loss from any apprehension of danger to the public peace. We have further to observe that whatever danger or inconvenience is likely to flow from this source already exists. Any inference of guilt which might be made from the election of a party libelled to pursue a course which excluded proof of the truth of the fact, rather than one which admitted such an inquiry, may even now be made, from the election to prosecute by indictment rather than proceed by action or criminal information. Again, the distinction proposed would render some restriction necessary in regard to the prosecutor. It might be attended with great inconvenience if

any one were allowed to prosecute in respect of the private offence except the party injured, or some one acting under his authority; for otherwise there might be great danger to the character of an individual by means of a collusive prosecution. If A., a stranger, could prosecute B. for an alleged libel on the character of C., who was no party to the proceeding, and B. were entitled to set up a justification of the truth of the alleged libel, great injustice, it is plain, might be done to C., (who had no means of becoming party to the proceeding,) either from ignorance of the facts, or from actual collusion. The adoption of such an alteration would therefore render it expedient that it should be accompanied by some provision for the purpose of excluding any inconvenience of this nature. Such, we apprehend, may easily be made; it would consist principally in confining the power of prosecuting in respect of the false libel, or of the injury to reputation, to the party defamed, or some other person who should prosecute with his consent. It might perhaps further be advisable to provide that no one should prosecute for the more general offence in respect of the injury to the public peace without giving previous notice to the party injured, in order to give him an opportunity, if he chose to do so, of becoming the prosecutor."

EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS AT THE LONDON UNIVERSITY.

Thursday, November 25, 1841.

Examiner, Mr. GRAVES.

Morning Examination.

COMMON LAW.

I.—1. In what cases may a married woman sue at law without her husband? 2. In what cases *must* the husband and the wife be co-plaintiffs? 3. In what cases has the husband an option of suing with or without his wife? 4. What is the practical effect of unnecessarily making the wife a co-plaintiff?

II. What are the provisions of 3 & 4 W. 4, c. 42, respecting pleas in abatement, (a) for non-joinder of persons as co-defendants, (b) for misnomer?

III. 1. Explain the law of accord and satisfaction; 2. What is legal set-off? 3. Is evidence of set-off admissible, without plea, after notice?

IV.—1. What is a sufficient tender? 2. In what cases may actual tender be dispensed with? 3. In what cases of unliquidated damages may a tender of amends be pleaded?

V. Of what instruments must *proferri* be made in pleading?

VI. In what cases is it requisite that a plea should conclude, (a) to the country, (b) with a prayer of judgment?

VII. State the resolutions in *Crogate's case*, 8 Co. 66, as to replications *de injuriâ*, and show

how their application has been extended by the operation of the new rules of pleading.

VII.—1. In what cases of actions for words is it necessary to allege special damage? 2. In what cases is it allowable to do so, but not necessary? 3. When is the allegation traversable? 4. Can special damage be given in evidence without an allegation of it in pleading?

IX.—1. What is sufficient evidence of the dishonour of a bill of exchange? 2. Under what circumstances is notice of dishonour dispensed with? 3. When the circumstances amount to such dispensation, is proof of them admissible in evidence under the usual averment of notice having been given?

X.—1. What is the mode of proceeding in order to outlaw a defendant?

XI.—1. In what cases does a verdict for the plaintiff not carry costs? 2. In what cases is a certificate of the judge necessary to entitle the plaintiff to costs? 3. In what cases may the plaintiff be deprived of costs by the judge's certificate?

XII.—1. To what cases is (a) *repleader*, (b) *venire de novo*, applicable? 2. What authority has a court of error in awarding (a) *repleader*, (b) *venire de novo*, in proceedings (a) out of the superior courts, (b) out of the inferior courts?

XIII.—1. For what injuries committed out of England can an action be maintained here? 2. In what cases can crimes committed out of England be punished here?

XIV.—1. How may a foreign judgment be rendered available here? 2. In what cases is a foreign judgment recognized as conclusive in the courts of this country?

Afternoon Examination.

I.—1. In what cases may an action of debt or an action of assumpsit be brought at the option of the plaintiff? 2. In what cases will debt lie, and not assumpsit? 3. In what cases will assumpsit lie, and not debt?

II. In what cases may money paid in consequence of an illegal agreement be recovered in assumpsit?

III.—1. When may an action be maintained on a *quantum meruit* for work done, though not in conformity with a special agreement? 2. In such cases what is the measure of the damages to be recovered by the plaintiff?

IV. When a special contract has been entered into between two persons, in what circumstances can one of them, not having entirely performed his part of the agreement, bring (a) a special action of assumpsit, (b) an action of indebitatus assumpsit, against the other?

V.—1. Has a debtor, owing money on several accounts,—e. g. on debts carrying interest and on debts not carrying interest—a right in all cases to select the account to which payments made by him shall be applied? 2. If this right exists in any case, within what, if any, limits of time is it circumscribed? 3. Is circumstantial evidence of specific application by the debtor within due time in any case ad-

missible? 4. Where a payment has been made without any specific application, expressly declared or evidenced by circumstances, on the part of the debtor, does the law make any presumption as to his intentions, or does it leave the application in all cases to the payee?

VI.—1. In agreements, what provisions in restraint of trade are allowable? 2. Is it necessary that there should be an *adequate* consideration for the restraint?

VII. In what cases is evidence of usage admissible to explain or add to a contract?

VIII. Explain the differences between an action for false imprisonment, and an action for malicious arrest.

IX. Under what circumstances is (a) a peace officer, (b) a private person, authorized to arrest without warrant, (a) for felony, (b) for misdemeanour?

X.—1. If an officer has a warrant to arrest a man (a) for felony, (b) for misdemeanour, under what circumstances is he justified in breaking into the house of such person? 2. In what cases under a warrant against one man, may the house of another be broken into? 3. What circumstances justify the breaking into a house under the authority of a search warrant?

XI. Mention some of the most important principles of the law, as altered by recent enactments, with respect to felonious injuries to the person not amounting to murder.

XII. What is the meaning of the word "malice" in relation (a) to murder, (b) to malicious injuries?

XIII.—1. Wherein does the offence of cheating consist at common law? 2. Describe the nature of the offence of obtaining goods under false pretences?

XIV.—1. Define and class (a) principals; (b) accessories. 2. In what ways may receivers of stolen goods be proceeded against?

XV. State the practice with respect to the admission of accomplices to give evidence.

XVI. In what cases are the costs of (a) preliminary proceedings; (b) the prosecution, allowed?

MR. SERJT. TALFOURD'S ADDRESS ON THE DISTRIBUTION OF LEGAL HONOURS.

We recently gave some of the Questions at the Examination for the degree of Bachelor of Laws at the London University, and in the present number have continued them.—We now also gladly avail ourselves of the opportunity of making the following extracts from the eloquent address of Mr. Serjt. Talfourd, who presided at the distribution of Prizes and Certificates of Honor at the University College. The learned Serjeant said,

"It is now my duty, as it is my privilege, to address you upon the gratifying spectacle we

have just witnessed. Without emulating the professional modesty of those successful candidates for honours in the department of legal study, who, through diffidence, declined to appear before you to receive the prizes they have achieved, I assure you, I feel it no easy task to address you; because I am aware that the testimony of your approving looks and generous applause, bestowed on the announcement of the successes of these youthful aspirants is far more influential and affecting as a reward of their studious toil and a stimulus to future exertion, than any observations which I could make, if I were master of the most impressive language.

"In the midst of the congratulation, and the hopes which prevail among those who surround me, I confess with regret that I look on Collegiate Institutions with a stranger's love. It was not my fortune to be in my youth, a partaker of the enjoyments and the benefits which are accorded to those who pass beneath their shadow, a season of wholesome and happy probation, before they enter on the cares and anxieties of manhood. But I have always felt that these august establishments,—the nurseries of genius,—the conservators of taste,—the fortresses of learning,—diffused blessings extending far beyond the circle of those who have completed the accomplishments of youth within their precincts; as you gratefully feel in the Professors they have given to you. I have often thought with delight—unmingle, I trust, with envy—on the glorious associations which have been cherished in our two great English Universities; on the friendships cemented; on the noble ambitions excited; and of the imperishable recollections stored within their shelter. In no spirit of sectarian jealousy, with no feeling of hostility to those venerable seats of learning, were the deep foundations of this institution laid. Its founders were prompted to their good work by a sense of the blessings which had been thus dispensed for ages to a limited class; by the desire that these blessings should be yet more widely extended; that they should be attainable by youths who could not boast of great wealth or lofty parentage; and be open to all, without distinction of party or of creed! Happily for mankind, the objects which collegiate education embraces, belong exclusively to no station—to no party—to no class—but are free as the excursions of science or of fancy, and as the wishes and affections of the human heart. Wisely was it judged, that in this great city—the capital of an empire embracing every variety of climate, soil, character, opinion, yet more dignified as the central seat of a Literature extending to the utmost boundaries of human society, refining the dense population of crowded towns, and expanding in trackless wilds, and as the sturdy arm levels the American forest, peopling the groves that it reveals with visions of beauty which its own genius has created—that in this mighty heart of England and England's literature, a College of London's own should open its portals to the free enterprise of the sons of her citizens. Yet not for them alone, but for all

....., who speak the tongue
That Shakespear spoke; the faith and
morals hold
That Milton held,

should a College be open to extend and to apply the triumphs of that language which promised to those immortal poets an audience, few in number compared to those crowding nations who now rejoice to speak it, and with it to exult in their fame.

"In adverting to the peculiar benefits which may be enjoyed in this institution by youths who are destined for the profession to which I have the honour to belong, I feel that I have a right to exult in it here, in this institution, which has so largely engaged the generous aid of both its branches; which, with reference to the bar, has attracted, though nothing could limit or absorb, the mighty energies of that illustrious nobleman (*Lord Brougham*), whose Chair I now have the high honour to occupy; and which, among the solicitors who have watched its progress and contributed to its support, can distinguish the honest name of *Jonathan Brunnett*, who has safely and wisely and nobly invested no small portion of the earnings of his honourable career to invest it with stability and power. Whichever branch of that profession may attract the student, who may desire to pursue his studies amidst the comforts and the virtues of home, he will find the best initiation in some course of mental discipline, like that over which your excellent professors, my friends (*Graves and Carey*, preside. Before he enters on a maze of bewildering subtleties—before he encounters the mass of statutes and decisions which may well appal the most ardent and industrious aspirant—it is well that he should trace the principles of our law in the antiquity of its history, which confer on it the dignity of a science, and which, so far from impeding his more practical and minute researches, will give to them a meaning and a guide. Thus he will escape that contracting and hardening influence which mere technicalities, regarded only in reference to their immediate results, must exercise on the most ingenious nature. Thus will he acquire those habits of strenuous industry—not a mere laborious occupation of time, but a steady progress from thought to thought—which, far more than brilliant talent, constitute the means of success and of its attendant honours. Let no one who enters thus on this great study be disheartened because its first labours are painful; the sense of progress will soon give the sense of pleasure; and the mind, by continuous exercise in one laborious employment, will feel life itself grow into a nobler identity as it is connected and amassed by a single aim. Far better is it thus to engage in one arduous pursuit, and to look patiently to the distant future for its reward, than to fritter youth away in search of the petty excitements of premature literary distinction, in which so many generous spirits have been wasted—to feel existence, not as a succession of sparking drops, but as a continuous stream."

The following are the names of the successful candidates :—

ENGLISH LAW.

P. Stafford Carey, A. M. Professor.

Outlines of Private Law.—Prize and 1st cert.

—Nathaniel W. Bromley, of London.

2nd Certificate.—Thomas Jacob Freeth, of London.

3rd ditto — John Dendy Sadler, of Horsham.

4th ditto —Samuel Mullens, of London.

5th ditto —Thomas Spencer Cope, of London.

Criminal Law.—Prize and 1st Cert.—Thomas Jacob Freeth.

2d Certificate.—John D. Sadler.

3rd ditto —N. W. Bromley.

4th ditto —S. Mullens.

Law of Contracts.—1st Prize and 1st Cert.—N. B. Bromley.

2d Prize and 2d Cert.*—T. J. Freeth.

3d Certificate.—J. D. Sadler.

4th ditto —S. Mullens.

5th ditto —Stephen Camp, of London.

6th ditto —T. S. Cope.

JURISPRUDENCE.

John T. Graves, A.M. F.R.S., Professor.

International Law.—1st Prize and 1st Cert.—James Stansfield, of Halifax, Yorkshire.

2d Prize and 2d Cert.—Frederick Thompson, of London.

3d Prize and 3d Cert.—Charles J. Foster, of Cambridge.

4th Cert.—(Not claimed.)

Law of English Courts of Equity.—Prize and 1st Cert.—C. J. Foster.

2d Certificate.—Stephen Camp.

3d ditto —Thomas Jacob Freeth.

History of Roman Law.—1st Prize and 1st Cert.—Sidney Milnes Hawkes, of Bishop's Stortford, Herts.

2d Prize and 2d Cert.—Edward Elcock Molyneux, of London, B.L.

3d Certificate.—Thomas Jacob Freeth.

4th ditto —Stephen Camp.

* Mr. Freeth having obtained the Second Prize last session, it was given this year to Mr. Sadler, the next in merit.

THE SKERRIES LIGHT-HOUSE COMPENSATION CASE.

We present our readers with the following case, which, as matter of legal history and topography, we think will not be wholly uninteresting to them.

The Rev. John Jones and others . . . Plaintiffs,
and

The Corporation of Trinity House . . Defendants.

THIS was an inquiry before the Sheriff of Anglesea to assess the value of a light-house,

called "The Skerries," which is situate on a rock off Holyhead, in the Isle of Anglesea. By an act of the 6 & 7 W. 4, c. 79, usually called "The Light-Houses Act," the corporation of Trinity House are authorized to purchase the few lights on the coasts of England not already belonging to them. The powers of purchase comprise provisions that in case of parties not agreeing, the matter shall be referred to a jury, and in that event the sheriff of the county wherein or next whereunto the light is situate is required by the 6th section to impanel a jury of men qualified according to the laws of the realm to serve on special juries, who shall inquire of, assess, and give a verdict for the *true, fair, and just* value of the light-house which shall be the subject of the inquiry, and the sheriff shall give judgment for the sum so assessed.

Under this act the corporation had applied to the owners of the Skerries Light-House with a view to the purchase of it; but the magnitude of the revenue derived from the tolls payable in respect of the light, rendered it improbable that they would agree on a price, and it became necessary, therefore, to resort to a jury to assess the amount to be paid. An inquiry was accordingly holden on the 26th day of July, 1841, at Beaumaris, before Richard Trygarn Griffith, Esq., High Sheriff of the county of Anglesea, assisted by William Erle, Esq., Q. C., as his assessor.

The counsel for the *claimants*, were—H. M. Attorney General, Sir Thomas Wilde; F. Kelly, Esq.; J. Jervis, Esq.; Vaughan Williams, Esq. The solicitors were—Messrs. Baxter, Lincoln's Inn Fields; and Messrs. Evans and Morgan, Cardigan.

For the *Trinity House*, the counsel were—Sir F. Pollock; Sir W. Follett; C. Cresswell, Esq.; Frederick Robinson, Esq.; Mr. Teesdale, being the solicitor.

The importance of the question, and the presence of such a number of the leading members of the Bar, naturally attracted a large concourse of the principal gentry, who had seats reserved for them in Court: the Shire Hall was crowded at an early hour, and continued so throughout the inquiry, and the town presented more the appearance of a general election than even of an ordinary assize.

The claimants went for 600,000*l.*, and in support of their claim produced the collectors of Customs from London, Liverpool, and Dublin, to prove the annual clear revenue derived from the tolls; three surveyors from London, to prove the number of years' purchase of freehold estates; and three solicitors, to give the same description of evidence.

The jury returned a verdict for 444,984*l.* 1*l.* 2*d.*, being twenty-two years' purchase; and we understand their costs have been since taxed by the Master at 4,138*l.* 1*l.* 10*d.*

Although from the nature of the subjects which we have to discuss in the Legal Observer, we are now and then obliged to deal a little in fiction, we very seldom indulge in poetry; yet at this season of the year, we hope it will not be considered out of place to pre-

sent our readers with the following extracts from a versification of the transaction, which appeared in the North Wales Chronicle of the 28th September last, and has since been republished in another form,—the whole story, however well told, being too long for insertion in our columns:—

SPECIAL JURORS of Anglesey, haste to Beaumaris
On horses, in carriages, hurry away,
To find the *fair, just, and true* worth of "The Skerries,"
For the Trinity Masters and Wardens to pay.

From their Circuits six eminent Gowns, silk and stuff,
Are posting express to the hall of the Shire;
There to meet other Stars, Counsel learned enough,
To resolve all the doubts that the case may inspire.

But, hark! there's a sound—'tis the Crown's great Attorney,
Brother *Wilds*, with his horn,* his post-chariot and four,
To the right and the left, clear the road, hang and burn ye,
He must be in first, let who will be before.

Push on then, Sir Frederick,—Sir William hark for'ard,^b

Sir Henry's arrived—Mr. Herbert to boot;^c
And tail up ye Circuitors, Western and Nor'ard,
Let your speed to the cause, with your zeal in it suit.

Now all are arrived at the Bulkeley Hotel,
Solicitors, witnesses, parties are there;
The appalling amount who shall dare to foretel?
While the litigants for the great conflict prepare.

Behold the High Sheriff in dignity seated,
A learned Assessor,^d in aid, by his side;
The fair from all parts are with courtesy greeted,
And the Hall, in their presence, boasts Anglesey's pride.

To the Sheriff, Assessor, and Jurymen sworn,
The learned Attorney now opens his case;
And while bursts of fine feeling his *figures* adorn,
Pounds, shillings, and pence have the prominent place.

Three collectors are called, three surveyors are next,
And then come three lawyers, whose moderate bounds

Would make it appear that the claimants are vex'd
To the tune of six hundreds of thousands of pounds!

But listen to me! says Sir Frederick then,
And let these bold Claimants from you understand

By the verdict of sensible, sound judging men,
They've no right, for a rock, to broad acres of land.

* The learned Serjeant uses a Horn in travelling, which his servant blows, when occasion requires.

^b Sir Frederick Pollock and Sir William Fullett.

^c Sir Henry Pelly, the Deputy Master of the Trinity House, and Mr. Herbert, the Secretary.

^d William Erle, Esq.

The chance of a war makes the produce of tolls,
Such as these, too unstead for you ever to treat,
Like *his* property who for his income enrolls
The rent of rich meadows and furrows of wheat.

The Assessor sums up, and the jury retire,
Expectation is big with the fate of the day;
By and bye comes a verdict, 'twill nearly require
Four hundred and forty-five thousand to pay!

But the fight has been fair, and both sides are content,
And the Court stands adjourn'd till next morning at ten;
That the lawyers may frame, with its proper intent,
The finding and judgment, to execute then.

We cannot follow the Bard through the details of the luncheon, which formed an agreeable interlude in the proceedings, nor the banquet which closed the day; but we select a few lines more to complete the nomenclature of counsel:—

Sir Fred'rick goes first, then Sir William, then *Kelly*,
And the meeting breaks up with unfeigned regret;
Tho' some few sat more late than I'm able to tell ye,
And with *their* good will might be sitting there yet.

Next morning Sir Henry is off with the day,
And *Creswell* and *Erle* shortly take up his speed;²
But *Jervis*, and *Williams*, and *Robinson* stay
To see the last finishing put to the deed.

We must also abstain from the episode of the *Lost Juror*; but we hope we may be excused for adding the concluding verse:—

Then huzza! for the Queen, and the Trinity Board,
The High Sheriff, the Jury—huzza! for Beaumaris,
Huzza! for the counsel, with learning so stored,
And last, tho' not least, here's huzza! for
"THE SKERRIES."

MASTERS EXTRAORDINARY IN CHANCERY.

From 23d November to 17th December, 1841, both inclusive, with dates when gazetted.

Beldam, Edward, Royston, Herts. Nov. 23.
Bush, John Alderton, Bradford, Wilts. Dec. 17.
Bush, John, Trowbridge, Wilts. Dec. 17.
Cheek, Oswald, Evesham, Worcester. Dec. 17.
Cort, Joseph Denison, Blackburn, Lancaster. Dec. 17.
Foster, John Lyon, Hertford. Dec. 14.
Garland, John, Dorchester. Dec. 3.
Howell, Abraham, Welchpool, Montgomery. Dec. 10.
Nash, Saunders, High Wycombe, Bucks. Dec. 17.
Ord, Charles Ovington, Middlesborough, York. Dec. 14.
Patchett, Edwin, Nottingham. Dec. 3.
Preston, Charles, Hull. Dec. 7.
Thomas, Evan, Brecon. Dec. 17.
Tillett, Samuel, Colchester. Nov. 26.
Trevor, Thomas Tudor, Guisborough, York. Dec. 3.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 23d November to 17th December, 1841, both inclusive, with dates when gazetted.

- Barker, Richard, sen., Richard Barker, jun., James Lamb Barker, and John Fenwick, jun., Tyne-mouth, Northumberland, Attorneys and Solicitors. Nov. 30.
- Brown, John Johnson, and Josias Thomas Ans-dell, Liverpool, Attorneys and Solicitors. Nov. 26.
- Shave, Jehu, and John Taylor, Fenchurch Street, London, Attorneys and Solicitors. Nov. 26.
- Wheeler, John Rogers, and William Wilson Wheeler, Wokingham, Berks, Solicitors and Attorneys. Nov. 26.
- Wildes, Henry Atkinson, Charles Scudamore, and Frederick Scudamore, Maidstone, Kent, Attorneys and Solicitors. Dec. 3.

BANKRUPTCIES SUPERSEDED.

From 23d November to 17th December, 1841, both inclusive, with dates when gazetted.

- Miall, Samuel, Sun Tavern Fields, Saint Georges in the East, Victualler. Dec. 3.
- Saunders, John, Plymouth, Devon, Porter Merchant. Dec. 3.
- Searle, Cooper, Bury St. Edmunds, Suffolk, Printer and Bookseller. Nov. 26.
- Smith, John, Leek, Stafford, Brewer. Dec. 17.
- Turlay, John, Manchester, Merchant. Nov. 23.
- Watson, John Tomes, Worcester, Linen Draper. Dec. 10.

BANKRUPTS.

From 23d November to 17th December, 1841, both inclusive, with dates when gazetted.

- Adams, Edmund, Blenheim Street, New Bond Street, Livery Stable Keeper. *Belcher*, Off. Ass.; *Yates & Co.*, Duke Street, Westminster. Nov. 30.
- Adams, John Corbett, Basinghall Street, London, Woollen Warehouseman. *Johnson*, Off. Ass.; *Gale*, Basinghall Street. Dec. 7.
- Algar, Stannard, Reading, Berks, Brewer. *Weeden & Co.*, Reading; *Hill*, Throgmorton Street. Nov. 30.
- Amos, William, Walbrook, London, Sponge and India Rubber Merchant. *Belcher*, Off. Ass.; *Rutherford*, Lombard Street. Dec. 17.
- Anderson, John, Liverpool, Oil Merchant and Manufacturer of Varnish. *Loundes & Co.*, Liverpool; *Sharpe & Co.*, Bedford Row. Dec. 10.
- Axmann, Paul, and John George Christ, Mark Lane, London, Foreign and General Merchants. *Graham*, Off. Ass.; *Lovell & Co.*, Great Ryder Street, St. James's. Dec. 10.
- Bacon, Robert, and Robert Wayman, Barbican, London, Wire Workers. *Graham*, Off. Ass.; *Messrs. Crosby*, Old Jewry. Dec. 17.
- Baltinger, William, Swansea, Glamorgan, Baker. *Williams & Co.*, Swansea. Dec. 14.
- Barnes, William, Saint Paul's Church Yard, London, Milliner. *Groom*, Off. Ass.; *Turner & Co.*, Basing Lane, London. Nov. 26.
- Bate, Thomas Compton, Kinfare, Stafford, Farmer

- and Timber Dealer. *Swain & Co.*, Old Jewry; *Roberts & Co.*, Stourbridge. Dec. 7.
- Batson, William Smith, John Wilson and John Langhorn, Berwick-upon-Tweed, Bankers. *Messrs. Weddell*, Berwick-upon-Tweed; *Meg-gison & Co.*, King's Road, Bedford Row; Dec. 14.
- Bazley, John Hilton, Manchester, Warehouseman. *Hadfield*, Manchester; *Johnson & Co.*, Temple. Nov. 26.
- Berrill, Bartholomew, Liverpool, Merchant and Broker. *Yates*, jun., Liverpool; *Holme & Co.*, New Inn. Nov. 30.
- Bickerton, Theophilus, Newtown, Montgomery, Linen and Woollen Draper. *Messrs. Bagster*, Lincoln's Inn Fields; *Sale & Co.*, Manchester. Dec. 3.
- Birtwistle, Samuel, Northwich, Chester, Flour Dealer. *Johnson & Co.*, Temple; *Higson & Co.*, Manchester. Dec. 3.
- Blain, William, Saint Andrew's Road, Southwark, Surrey, Draper. *Thurgand*, Off. Ass.; *Cattlin*, Ely Place. Dec. 17.
- Blatch, William, and William Lampert, Brompton, Middlesex, Printers. *Pennell*, Off. Ass.; *Boulton*, Northampton Square. Nov. 30.
- Bourne, Timothy, Liverpool, Lancaster, Cotton Broker. *Howard*, Liverpool; *Jenings & Co.*, Temple. Dec. 17.
- Brighton, Thomas Woodhouse, Cheltenham, Gloucester, General Agent. *Whalley*, Cheltenham; *Becke & Co.*, Lincoln's Inn Fields. Dec. 3.
- Brook, John, and Thomas Brook, Stourbridge, Worcester, Drapers. *Belcher*, Off. Ass.; *Reed & Co.*, Friday Street, Cheapside. Dec. 7.
- Brown, John, Birmingham, Victualler. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. Nov. 26.
- Buckle, John, Kensington, Middlesex, Tea Dealer and Grocer. *Belcher*, Off. Ass.; *Hill & Co.*, New London Street, Fenchurch Street. Nov. 30.
- Buglass, David, Sunderland, Durham, Victualler. *Bell & Co.*, Bow Church Yard; *Wilson*, Sunderland. Dec. 10.
- Burton, William, Nuneaton, Warwick, and of Chilvers's Coton, in the same county, Tanner. *Batige & Co.*, Chancery Lane; *Craddock*, Nuneaton. Nov. 30.
- Carey, Henry, Nottingham, and George Daniel Carey, Basford, Nottingham, Hat Manufacturers. *Yallop*, Furnival's Inn; *Messrs. Parsons*, Nottingham. Nov. 30.
- Carr, Charles, Heaton Norris, Stockport, Lancaster, Cotton Manufacturer. *Coppock & Co.*, Stockport; *Coppock*, Cleveland Row, Saint James's. Dec. 17.
- Carter, Patrick Worters, and James Jackson, Brewer Street, Golden Square, Woollen Drapers. *Groom*, Off. Ass.; *Fox & Co.*, Basinghall Street. Dec. 7.
- Castle, Henry, Lucas Street, Rotherhithe, Surrey, Ship Owner. *Edwards*, Off. Ass.; *Haslam & Co.*, Copthall Court. Dec. 14.
- Chancellor, Stephen Sackett, jun., Margate, Kent, Baker. *Boys & Co.*, Margate; *Egan & Co.*, Essex Street, Strand. Nov. 23.
- Charlton, Thomas, and Edward Thompson, South Shields, Durham, Wine and Spirit Dealers. *Treherne & Co.*, Leadenhall Street; *Dale*, North Shields. Dec. 10.
- Coleman, Richard, Manchester, and Staly Bridge, Lancaster, Mercer and Draper. *Sale & Co.*, Manchester; *Messrs. Baxter*, Lincoln's Inn Fields. Dec. 17.

- Colnett, John, Gravesend, Kent, Hotel Keeper. *Gibson*, Off. Ass.; *Shenbridge*, Bedford Row. Dec. 17.
- Cook, Allen, Manchester, Commission Agent. *Adlington & Co.*, Bedford Row; *Clay & Co.*, Manchester. Nov. 30.
- Daniel, Charles, Oxford Street, Jeweller. *Whitmore*, Off. Ass.; *Spyer*, Broad Street Buildings. Dec. 17.
- Danks, Michael, Hatton Garden, Carpet Warehouseman. *Pennell*, Off. Ass.; *Grimaldi & Co.*, Throgmorton Street. Dec. 3.
- Drake, Robert, Bristol, Engraver, Copperplate Printer, and Wholesale and Retail Stationer. *Surr*, Lombard Street; *Whittington & Co.*, Bristol. Dec. 14.
- Dunn, William, Southampton, Merchant. *Jones & Co.*, John Street, Bedford Row. Dec. 7.
- Evans, Samuel Read, [quarry Road] Somerset, Clothier. *Miller*, Frome Sellwood; *Frampton*, South Square, Gray's Inn. Nov. 26.
- Evans, Samuel Read, Somerset, Clothier. *Miller*, Frome, Selwood; *Frampton*, South Square, Gray's Inn. Dec. 3.
- Eskrigge, Thomas, Warrington, Lancaster, Cotton Manufacturer. *Adlington & Co.*, Bedford Row; *Nicholson & Co.*, Warrington. Dec. 17.
- Fisher, Benoni, Walsall, Stafford, Ironmonger. *Philpot & Co.*, Southampton Street, Bloomsbury; *Green*, Walsall; *Whitless & Co.*, Sheffield. Dec. 14.
- Gatchome, Charles, Clifton, Bristol, Surgeon and Apothecary. *Holme & Co.*, New Inn; *Prideaux & Co.*, Bristol. Nov. 23.
- Giles, Thomas, St. John's Lane, Clerkenwell, Middlesex, Wire Worker. *Pennell*, Off. Ass.; *Crosby & Co.*, Church Court, Old Jewry. Nov. 30.
- Gillott, Samuel, jun., Sheffield, York, Hatter. *Messrs. Wake & Co.*, Sheffield; *Milner*, Sheffield; *Brookfield*, Raymond Buildings, Gray's Inn. Nov. 23.
- Goddard, Reynolds Hogg, Wood Street, London, Fringe Maker. *Lackington*, Off. Ass.; *Richards & Co.*, Lincoln's Inn Fields. Nov. 30.
- Gooden, Richard, Welchpool, Montgomery, Carrier and Coach Proprietor. *Milne & Co.*, Temple; *Yarley*, Welchpool. Nov. 30.
- Graham, John, Hackney Road, Middlesex, Grocer. *Gibson*, Off. Ass.; *Hill & Co.*, St. Mary Axe. Dec. 7.
- Greves, Henry, late of Kenilworth, now of Leamington Priory, Warwick, Timber Merchant. *Cary*, St. Swithin's Lane; *Kitchen*, Warwick. Nov. 26.
- Griffin, James, Dudley, Worcester, Upholterer and Cabinet Maker. *Coombe*, Staple Inn; *Falloses*, jun., Dudley. Nov. 28.
- Griffiths, John, late of the Quadrant, Regent Street, now of Leicester Street, Regent Street, Milliner. *Pennell*, Off. Ass.; *Hell*, Craven Street, Strand. Dec. 17.
- Hadland, Joseph, Castle Dykes, Farthington, Northampton, Farmer, Grazier, Jobber, Salesman, and Cattle Dealer. *Capes & Co.*, Field Court, Gray's Inn; *Roche*, Daventry. Dec. 10.
- Hairise, Gribby, York, Linen Draper. *Messrs. Rushworth*, Staple Inn, Holborn; *Smith*, jun., York. Dec. 7.
- Harriot, George, Ormskirk, Lancaster, Brewer. *Jacques & Co.*, Ely Place; *Wilsby*, Ormskirk. Dec. 7.
- Heslam, Roger, Little Bolton, Lancaster, Cotton Spinner and Manufacturer. *Norris & Co.*, Southampton Buildings; *Glover*, Bolton-Je-Moors. Dec. 14.
- Hawarden, James, Robert Myerscough, and John Jackson, Little Bolton, and of Manchester, Manufacturers of Cotton Cloth by Power, and Commission Agents. *Johnson & Co.*, Temple; *Pendlebury*, Bolton. Nov. 23.
- Heap, Henry, Leeds, York, Silk Dyer. *Wigsworth & Co.*, Gray's Inn Square; *Barwick*, Leeds. Nov. 23.
- Hemming, Augustus Frederick, Chiswell Street, Finsbury, Elastic Surgical Instrument Maker. *Turquand*, Off. Ass.; *Teague*, Crown Court, Cheapside. Dec. 17.
- Hey, Joseph, jun., New Fellon, Ovendon, Halifax, York, Carpenter and Joiner. *Worrell*, Halifax; *Adlington & Co.*, Bedford Row. Nov. 26.
- Higginbottom, Samuel, Dukinfield, Staley-Bridge, Chester, Shop-keeper. *Richards & Co.*, Lincoln's Inn Fields; *Higginbottom & Co.*, Ashton-under-Lyne. Nov. 26.
- Holding, Richard, jun., Blackburn, Lancaster, Coal Merchant. *Holme & Co.*, New Inn; *Crook*, Chorley. Nov. 23.
- Horend, John William, Paradise Street, Lambeth, Surrey, Builder. *Graham*, Off. Ass.; *Thompson & Co.*, Backlombury. Dec. 17.
- Hopkins, James, and James Drewitt, Arundel, Sussex, Bankers. *Blackmore & Co.*, New Inn. Dec. 7.
- Hudson, George, St. Peter the Apostle, Isle of Thanet, Kent, Victualler. *Chaplin*, Gray's Inn Square. Dec. 10.
- Hughes, David, Welchpool, Montgomery, Lime Burner. *Milne & Co.*, Temple; *Yarley*, Welchpool. Dec. 7.
- Hughes, Edward Hale, Wrexham, Denbigh, Victualler. *Philpot & Co.*, Southampton Street, Bloomsbury; *Hughes*, Wrexham. Dec. 17.
- Hunt, Henry Carew, of Hamburg, Germany, and Old Broad Street, London, Merchant. *Whitmore*, Off. Ass.; *Heathcote & Co.*, Coleman Street. Dec. 7.
- Hunt, Robert Holdsworth Carew, and Edward Osborne Smith, Old Broad Street, London, and of Hamburg, in Germany, Merchants. *Whitmore*, Off. Ass.; *Heathcote & Co.*, Coleman Street. Nov. 26.
- Ingham, James, Halifax, York, Stone Mason. *Jacques & Co.*, Ely Place; *Edwards*, Halifax. Dec. 17.
- Jaques, Robert, and Robert Wilson, Leeds, York, Flax Spinners. *Wilson*, Southampton Street, Bloomsbury; *Payne & Co.*, Leeds. Dec. 7.
- Jervis, John, Wells, Somerset, Draper, Grocer, and Brush Manufacturer. *Davies & Co.*, Broad Street, Cheapside; *Britton*, Bristol. Nov. 23.
- Johnson, John, Nantwich, Cheshire, Druggist. *Hilditch*, Guildford Street, Russell Square; *McClure*, Nantwich. Dec. 7.
- Jones, Isaac, Worcester, Victualler. *Hughes*, Worcester; *Becke & Co.*, Lincoln's Inn Fields. Dec. 3.
- Keep, William, Northumberland Street, Strand, Tailor. *Green*, Off. Ass.; *Parson & Co.*, New Beowall Court, Lincoln's Inn. Dec. 14.
- Kerr, Henry Thomas Corgan, John Henry Baughan, and Thomas Turgie Haimes, Suffolk Street, Pall Mall, East, Army Agents. *Turquand*, Off. Ass.; *Palm & Co.*, Great Marlborough Street. Nov. 26.
- King, John, Bristol, Dealer in Ship's Stores. *Mahinson & Co.*, Temple; *Haberfield*, Bristol; *Britton*, Bristol. Nov. 23.

- Lafargue, Antonio, Great St. Helen's, London. Merchant. *Green*, Off. Ass.; *Phillips*, Lombard Street. Dec. 10.
- Lawrie, Adolphe, and Joseph Lock, Wood Street, London, Importers of Foreign Goods. *Turquand*, Off. Ass.; *Ashurst*, Cheapside. Dec. 3.
- Leech, Edward, Cinderhill, Pilkington, Lancaster, Cotton Spinner. *Clarke & Co.*, Lincoln's Inn Fields; *Sharpe & Co.*, Bedford Row; Messrs. *Grundy*, Bury; *Grundy*, Manchester. Nov. 26.
- Lindsay, James, and John Weatherby Lindsay, North Shields, Northumberland, Grocers and Wine and Spirit Merchants. *Trickers & Co.*, Leadenhall Street; *Dale*, North Shields. Nov. 23.
- Louides, James Hugh, Manchester, Wine and Porter Merchant. *Johnson & Co.*, Temple; *Hewitt*, Manchester. Nov. 50.
- Lyster, Thomas, Manchester, Corn and Flour Factor. *Johnson & Co.*, Temple; *Higson & Co.*, Manchester. Nov. 26.
- Makias Robert Jesse, Blandford Street, Manchester Square, Grocer, Oilman, and Wine Merchant. *Johnson*, Off. Ass.; *Seitchiff & Co.*, New Bridge Street, Blackfriars. Dec. 3.
- Marshall, John, Birch Lane, London, Merchant. *Turquand*, Off. Ass.; *Willis & Co.*, Tokenhouse Yard. Nov. 30.
- Matthews, David, and Anthony Gardner, Cheltenham, Gloucester, Grocers. *Blower & Co.*, Lincoln's Inn Fields; *Pruett & Co.*, Cheltenham. Dec. 10.
- M'Eroy, William, and Joseph Johnson, Harrow Road, Middlesex, Stone Masons. *Gibson*, Off. Ass.; *Turner*, Percy Street, Bedford Square. Dec. 14.
- Monteith, James, Totnes, Devon, Mercer and Draper. *Whiteford & Co.*, Plymouth; Messrs. *Sole*, Aldermanbury. Dec. 10.
- Miles, William, and Joseph Dawkins, Southampton, Boot and Shoe Makers. *Walker*, Southampton Street, Bloomsbury; *Deacon & Co.*, Southampton. Nov. 30.
- Morgan, Edward Morris, Welchpool, Montgomery, Barytes Manufacturer. *Milne & Co.*, Temple; *Yeasley*, Welchpool. Nov. 30.
- Morten, Thomas, sen., Hillingdon, Middlesex, Builder. *Lackington*, Off. Ass.; *Poole & Co.*, Gray's Inn. Dec. 10.
- Nock, Thomas, Oldbury, Salop, Coal Master and Coal Dealer. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. Nov. 26.
- Oldham, Wm. Edwin, Manchester, Commission Agent. *Johnson & Co.*, Temple; *Begshaw & Co.*, Manchester. Dec. 10.
- Oliver, Benjamin, and Wm. Goodwin, High Wycombe, Bucks, Drapers. *Green*, Off. Ass.; *Ashurst*, Cheapside. Nov. 30.
- Ouston, Richard, Kingston upon-Hull, Sawyer and Brush Stock Turner. *Hawkins & Co.*, New Boswell Court; *Levett*, Hull. Dec. 3.
- Overton, William Barnes, Howford Buildings, Fenchurch Street, London, and of Park Road, Dalston, Middlesex, Ship and Insurance Broker, Custom House and General Commercial Agent. *Lackington*, Off. Ass.; *Vandercom & Co.*, Bush Lane, Cannon Street. Nov. 23.
- Price, Benjamin, New Windsor, Berks, Victualler and Dealer in Wines and Spirits. *Lackington* Off. Ass.; *Gale*, Basinghall Street. Dec. 3.
- Pahmer, James, Upper Whitecross Street, Middlesex, Carpenter and Builder. *Green*, Off. Ass.; *Rixon & Co.*, Jewry Street, Aldgate. Dec. 3.
- Parker, Wm. Hockley, Nottingham, Grocer and Tea Dealer. *Johnson & Co.*, Temple; *Bowley*, Nottingham. Dec. 3.
- Parlow, Benjamin Birkett, Alfred Street, Stepney, Middlesex, Victualler. *Edwards*, Off. Ass.; *Ware*, Blackman Street, Southwark. Dec. 3.
- Partridge, Sarah, Birmingham, Victualler. *Austen & Co.*, Raymond Buildings, Gray's Inn; *Bower*, Birmingham. Dec. 10.
- Pearson, Thomas Peake, Liverpool, Grocer and Provision Dealer. *Vincent & Co.*, Temple; *Littledale & Co.*, Liverpool. Dec. 14.
- Peel, Joseph, late of the Strand, Middlesex, now of Newcastle upon Tyne, Picture Dealer. *Plumptre*, Lamb's Buildings, Temple; *Cram*, Newcastle-upon-Tyne. Dec. 17.
- Pennington, William, late of Bocking, Chester, but now of Marple Chester, Grocer. *Milne & Co.*, Temple; *Walmley*, Marple. Nov. 26.
- Pilbeam, Thomas, Parker Street, Drury Lane, Smith and Spring Maker. *Edwards*, Off. Ass.; *Mayhew & Co.*, Carey Street; *Lincoln's Inn*. Nov. 30.
- Pollock, Alexander Wynne, Liverpool, Commission Merchant. *Sharpe & Co.*, Bedford Row; *Harvey & Co.*, Manchester. Dec. 17.
- Potter, Michael, and John Lever, Manchester, Commission Agents and Manufacturers. *Slater & Co.*, Manchester. *Milne & Co.*, Temple. Dec. 17.
- Potts, Wm., Mowbray, Newcastle-upon-Tyne, Grocer and Tea Dealer. *Galsworthy & Co.*, Cooks' Court, Lincoln's Inn; *Dove*, Newcastle-upon-Tyne. Dec. 14.
- Powell, Robert, Brighton, Sussex, Linen Draper Messrs. *Sole*, Aldermanbury. Dec. 10.
- Pritchard, Robert, Bangor, Carnarvon, Druggist, Grocer and Tea Dealer. *Abbott & Co.*, New Inn; *Poole & Co.*, Carnarvon. Nov. 30.
- Prosser, Samuel, Portsea, Southampton, Merchant and Factor. *Low*, Staple Inn; *Low*, Portsea. Dec. 7.
- Railton, John, and James Pavey, Manchester, and of Colne, Lancaster, Mousseline de Laines and Commission Agents. Messrs. *Baxter*, Lincoln's Inn Fields; *Sale & Co.*, Manchester. Dec. 10.
- Rayner, George Algar, Halesworth, Suffolk, Linen Draper. Messrs. *Sole*, Aldermanbury. Nov. 23.
- Read, Benjamin, Worcester, Wine and Spirit Merchant. *Becke & Co.*, Lincoln's Inn Fields; *Frances*, Worcester. Nov. 23.
- Rees, John, Stourbridge, Worcester, Woollen Draper, Mercer, and Hatter. *Walker*, Furnival's Inn. Dec. 3.
- Rendell, Robert, Newton Abbot, Devon, Draper. *Turquand*, Off. Ass.; *Parker*, St. Paul's Church Yard. Dec. 10.
- Reynolds, William, Brightmet, Lancaster, Cotton Spinner and Farmer. *Hibbert*, Bolton-le-Moors; *Milne & Co.*, Temple. Nov. 23.
- Richardson, Charles, Bramley, Surrey, Builder. *Johnson*, Off. Ass.; *Blackmore & Co.*, New Inn. Nov. 26.
- Richardson, Reuben, Woburn Buildings, New Road, Middlesex, Cowkeeper and Dairyman. *Johnson*, Off. Ass.; *Galsworthy*, Ely Place. Dec. 10.
- Ridge, William, Charles Ridge, and William Newland, Chichester, Sussex, Bankers. *Sherwood*, Chichester; *Staniland & Co.*, Boarerie Street, Fleet Street. Dec. 3.
- Rogers, John, Shrewsbury, Salop, Hop Dealer and Brewer. *Pownall & Co.*, Staple Inn; *Cooper*, Shrewsbury. Dec. 17.
- Rose, John, Monk Wearmouth Shore, Durham, Grocer and Bread Baker. *Somis & Co.*, Fre-

- derick's Place, Old Jewry; Messrs. *Wright*, Sunderland. Dec. 7.
- Righton, John, Hebburn, Jerrow, Durham, Brewer and Victualler. *Hoyle*, Newcastle-upon-Tyne. *Crosby & Co.*, Church Court, Old Jewry. Dec. 17.
- Rutson, John, and John Jackson, Saint Paul's Church Yard, London, Commission Agents. *Whitmore*, Off. Ass.; *Wormald*, Macclesfield; *Williamson & Co.*, Verulam Buildings, Gray's Inn. Dec. 7.
- Sands, Robert, Nottingham, Lace Manufacturer. *Perry & Co.*, Nottingham; *Austen & Co.*, Raymond Buildings, Gray's Inn. Dec. 14.
- Saunders, Thomas, Northampton, Draper. *Turner & Co.*, Basing Lane, Cheapside; *Hensman*, Northampton. Dec. 10.
- Schofield, Charles, Kingston, Surrey, Timber and Coal Merchant. *Gibson*, Off. Ass.; *Kightley*, Pantom Square, St. James's. Dec. 3.
- Schwabacher, Leopold, Minorities, London, Wine Merchant and Dealers in Cigars. *Graham*, Off. Ass.; *Spiller*, Bank Buildings. Nov. 26.
- Scott, Robert, William Fairlie, and Joseph Hare, Union Court, London, Merchants. *Johnson*, Off. Ass.; *Gordon*, Old Broad Street. Dec. 17.
- Shaw, George, Wakefield, York, Grocer. *Lawrance & Co.*, Old Fish Street, Doctor's Commons; *Hasby & Co.*, Wakefield. Dec. 14.
- Siddons, James, James Moody Wathew, and John Siddons, jun., Nuneaton, Warwick, Coal Masters. *Beck*, Ironmonger's Hall, Fenchurch Street; *Hill*, Birmingham; *Troughton & Co.*, Coventry. Dec. 3.
- Simpson, John, Goswell Street, Middlesex, Currier and Leather Seller. *Groom*, Off. Ass.; *Nias*, Copthall Court, Throgmorton Street. Dec. 3.
- Skinner, Robert, Dock-head, Stone Wharf, Bermondsey, Surrey, Stone Merchant. *Edwards*, Off. Ass.; *Plews*, Bucklersbury. Dec. 7.
- Smethurst, James, Manchester, Smallware Manufacturer. *Walmley & Co.*, Chancery Lane; *Humphrys & Co.*, Manchester. Nov. 30.
- Stuttard, James, John Stuttard, Henry Stuttard, and Thomas Stuttard, Manchester, and of Clitheroe, Lancaster, Cotton Manufacturers. *Abbott & Co.*, Charlotte Street, Bedford Square; Messrs. *Bennett*, Manchester. Dec. 10.
- Taylor, Isaac, and Uriah Taylor, Meltham, Almondbury, York, Clothiers. *Battye & Co.*, Chancery Lane; *Stephenson & Co.*, Holmfirth. Dec. 14.
- Taylor, Josiah, Liverpool, Oil and Colour Dealer and Painter. *Norris & Co.*, Bartlett's Buildings, Holborn; *Norris*, Liverpool. Dec. 10.
- Trubshaw, James, jun., Stafford, Ironfounder. *White & Co.*, Bedford Row; *Foster*, Wolverhampton. Dec. 14.
- Unsworth, Joseph, Liverpool, Joiner and Builder. *Holme & Co.*, New Inn; *Booker*, Liverpool. Nov. 30.
- Vicat, Robert Palmer, Nelson Place, Old Kent Road, Surrey, Linen and Woollen Draper. *Edwards*, Off. Ass.; *Vandercom & Co.*, Bush Lane, Cannon Street. Nov. 23.
- Wainman, Thomas, Leeds, York, Dyer. *Few & Co.*, Henrietta Street, Covent Garden; *Upton*, Leeds. Nov. 30.
- Walker, John, Wardour Street, Oxford Street, Appraiser, Auctioneer, and Undertaker. *Belcher*, Off. Ass.; *Cranck & Co.*, London Street, Fenchurch Street. Dec. 17.
- Walker, Richard Collis, Newbold Moor, Chesterfield, Derby, Earthenware Manufacturer. *Lucas & Co.*, Chesterfield; *Spence & Co.*, Alfred Place, Bedford Square. Nov. 30.
- Wallace, William, and Robert Byers, Blackburn, Lancaster, Power Loom Cloth Manufacturers. *Clarke & Co.*, Lincoln's Inn Fields; *Ainsworth & Co.*, Blackburn. Dec. 7.
- Ward, Joseph, Nottingham, Victualler. *Yallop*, Funnival's Inn; *Parsons*, jun., Nottingham. Dec. 10.
- Weldon, James, Kidderminster, Worcester, and of Bell's Buildings, Salisbury Square, London, Feather Merchant. *Michael*, Red Lion Square; *Bird & Co.*, or *Talbot*, Kidderminster. Dec. 14.
- Williams, Peter, and Charles Mottram, Wood Street, London, Manchester, Warehousemen. *Abbott & Co.*, Charlotte Street, Bedford Square; Messrs. *Bennett*, Manchester. Nov. 23.
- Williams, Peter, and Charles Mottram, Wood Street, London, Manchester Warehousemen. *Lackington*, Off. Ass.; *Hardwick & Co.*, Cateaton Street. Dec. 10.
- Williams, Rice, Pwllheli, Carnarvon, Linen and Woollen Draper, Grocer, Tea Dealer and Shopkeeper. *Johnson & Co.*, Temple; *Mawson*, Manchester. Dec. 14.
- Winder, George, late of Sidney Alley, Leicester Square, now of Hackney Road, Jeweller. *Pennell*, Off. Ass.; *Williams*, Alfred Place, Bedford Square. Dec. 3.
- Wilson, Elihu, King Street, St. Giles, Stationer, and Rag Merchant. *Groom*, Off. Ass.; *Gale*, Basinghall Street. Dec. 17.
- Wood, Joseph, Manchester, Lace Dealer. *Yallop*, Funnival's Inn; *Parsons*, jun., Nottingham. Nov. 28.
- Wright, Joshua, Deritend Oil Mills, Birmingham, Matchet Manufacturer. *Holme & Co.*, New Inn; *Fellowes*, jun., Dudley; *Lowe*, Birmingham. Dec. 3.
- Yapp, John Pike, Weobley, Hereford, Grocer and Druggist. *Smith*, Chancery Lane; *Hammond*, Leominster. Dec. 3.

PRICES OF STOCKS.

Tuesday 21st December, 1841.

Bank Stock div. 7 per Cent.	- - - - -	165½
3 per Cent. Reduced	- - - - -	82½ a ½ a ¾ a 9
3 per Cent. Con. An. with div. for money	- - - - -	89½
3½ per Cent. Red. Annuities	98½ a 9 a 8½ a ¾ a ½	
Long Annuities, expire 5th Jan. 1860	12- ² / ₈ a 7- ⁷ / ₈	
Annuities for 30 years, expire 10th Oct. 1859	12½	
India Bonds 3½ per Cent.	- - - - -	1s. a 2s. pm.
3 per C. Cons. for op. 14th Jan.	88½ a 9 a ½ ex d.	
Exchequer Bills 1000l.	a 2½d. 12s. a 11s. a 10s. pm.	
Ditto 500l.	do. 10s. a 13s. a 10s. pm.	
Ditto Small	do. 11s. a 13s. pm.	

The Legal Observer.

SATURDAY, JANUARY 1, 1842.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LOCAL COURTS.

At a time when the establishment of local courts is much discussed, we wish to call attention to some late cases as to the power of commissioners of courts of request.

The distinction between the cases of the party and of the sheriff or his officer is well settled; the former, to justify his taking body and goods under process, must shew the judgment in pleading as well as the writ, but for the latter it is enough to show the warrant only.^a When indeed the officer of the court chooses to join in pleading with the party, then if the plea be defective, he must abide by the defects apparent on the pleas. He then foregoes the benefit of the warrant.^b But when he simply relies on the writ or warrant, he will be protected.

This distinction obtains as well in executing the process of an inferior court as a superior court. But if a plaintiff may sue if he please in the courts of Westminster Hall, and will be then safe, yet, if he will sue in an inferior court, he is bound at his peril to take notice of the bounds and limits of its jurisdiction.^c

These principles have been fully recognised in the cases to which we allude.

The commissioners of a court of request were empowered to award execution against the person of a party ordered to pay money, and therefore the clerk of the court, at the prayer of the party prosecuting the order, was to issue a precept by way of *ca. sa.* to the serjeant of the court, who was thereby authorized to take the debtor. The com-

missioners were also empowered to order debts to be paid by instalments, and under such terms as appeared to them reasonable, and on default in paying such instalments, the commissioners *present in Court upon due proof* of such default, were authorised to award execution for the instalment, in the same manner as for the debt first decreed. A party against whom an order had been made by the commissioners to pay a sum by instalments, neglected to pay an instalment; thereupon, at the request of the complainant, and without any previous order of the commissioners, *but according to the practice of the court*, the clerk of the court issued a warrant, under which the serjeant of the court took the debtor. It was held by the Court of Queen's Bench that the warrant was illegal, as execution had not been awarded by the commissioners present in court upon due proof of the default, and that the clerk who issued the warrant was liable in trespass at the suit of the debtor; and secondly, that the serjeant who executed the warrant was protected by the warrant, and was not liable. As to the argument as to the practice of the commissioners' court, the Lord Chief Justice said, "It is said that this mode of proceeding is valid because the case finds it to be according to the practice of the court. But the answer is, that the commissioners have no power to make such a practice as this or such an order *at the time of the judgment*, because, if made then prospectively, it dispenses with that proof of nonpayment which the statute requires, and with the exercise of any discretion on their part as to the execution or further costs. We therefore think that this direction for the issuing of execution, engrafted on the original judgment and made part of it, must be considered not merely as irregular, but a nullity; and if so, the clerk has issued a warrant without any au-

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^a *Cotes v. Michill*, 3 Lev. 20; *Moravia v. Sloper*, Willes, 30.

^b *Morse v. James*, Willes, 122; *Phillips v. Biron*, 1 Str. 509; *Smith v. Dr. Bouchier*, 2 Str. 993.

^c *Moravia v. Sloper*, Willes, 34; *Higginson v. Martin*, 2 Mod. 197.

thority, which therefore cannot protect him, and he is liable for the imprisonment occasioned by its execution." And his Lordship thus continued, "the case of the defendant *Witham* (the serjeant) stands on very different grounds. He is the ministerial officer of the commissioners, bound to execute their warrants, and having no means whatever of ascertaining whether they issue upon valid judgments, or are otherwise sustainable or not. His situation is exactly analogous to that of the sheriff in respect of process from a superior court," and his Lordship then referred to the cases before cited.⁴

In another case, first reported by our own reporter,* the commissioners of an inferior court, with jurisdiction to try cases of debt where the debtor resided within a certain district, and to award execution against the person, entertained a claim of debt against one who did not reside within their jurisdiction, and issued a warrant against him, under which he was taken in execution by the officer of the court. In trespass against the plaintiff below, the commissioners and the officer of the court, it was held, 1. That the plaintiff below, who had merely stated his case to the court, was not liable. 2. That the commissioners were liable. 3. That the officer, who would generally be protected by a warrant under such circumstances, was liable in this case, because the warrant under which he acted did not describe the court by its proper name and title.

These cases have long been before our readers; but we have thought this a proper time to advert to some of the inconvenience and injustice which may be done by the local courts unless duly controuled.

THE OPENING OF PARLIAMENT.

The year 1842 has now commenced. We have very recently ventured upon certain predictions as to the important changes in the law which will be made in its progress. Time can only shew whether we are in the right or not. We certainly await with no usual interest the opening of the new parliament, when a very few days will shew whether Sir Robert Peel has not in his budget a series of bills for effecting considerable alterations in various branches of the law. We have some reason to think that this will be so.

⁴ *Andrews v. Marris and another*, 1 Gale & Dav. 268; 21 L. O. 301.

* *Carrall v. Morley*, 22 L. O. 126; subsequently in 1 Gale & Dav. 275.

ISSUING EXECUTION UNDER 1 & 2 VIC. c. 110, ON RULES OF COURT.

In the present article we propose to state, shortly, the decisions as far as they have gone, on the 18th section of the 1 & 2 Vic. c. 110, with respect to issuing execution on rules of Court requiring parties to pay money. By that section, it is provided "that all decrees and orders of Courts of Equity, and all rules of Courts of Common Law, and all orders of the Lord Chancellor, or of the Court of Review in matters of bankruptcy, and all orders of the Lord Chancellor in matters of lunacy, whereby any sum of money, or any costs, charges, or expences shall be payable to any person, shall have the effect of judgments in the superior Courts of Common Law; and the persons to whom any such monies, or costs, charges, or expences shall be payable, shall be deemed judgment creditors within the meaning of this act; and all powers hereby given to the judges of the superior Courts of Common Law, with respect to matters depending in the same Courts, shall and may be exercised by Courts of Equity with respect to matters therein depending, and by the Lord Chancellor and the Court of Review in matters of bankruptcy, and by the Lord Chancellor in matters of lunacy, and all remedies hereby given to judgment creditors, are in like manner given to persons to whom any monies, or costs, charges, or expences are by such orders or rules respectively directed to be paid."

A question naturally arose on this section, as to whether it extended to cases where sums of money were ordered to be paid by awards in pursuance of submissions made rules of Court. Accordingly, in *Jones v. Williams*, 11 Adol. & El. 175, an application was made to set aside a writ of execution, issued on an award made in pursuance of an agreement of reference, which had been made a rule of Court. The arbitrator had directed a certain sum to be paid by the plaintiff to the defendant; and for that sum, together with costs, the defendant issued execution without signing judgment. The Court there held that the defendant could not, by virtue of the rule of Court, issue execution for the sum, under 1 & 2 Vic. c. 110, s. 18, that clause being only applicable to cases in which the amount of the money payable by the rule is expressed on the face of the rule itself. The Court there said, "In no instance of submission to arbitration is any money whatever to be payable by the rule; and then

the question is whether, if money be awarded to be paid, it becomes payable by the rule, by reference to it, by the consent of the parties that an award may be made, and, as it were, embodying an award made by consent into the rule by relation, as if the award itself was part of the rule; and whether this goes to make it payable by the rule within the meaning of the act. It is undoubtedly money payable by something arising out of, and connected with the rule; but, then, can the award be engrafted on the rule so as to make the money payable by the rule? The difficulty that presents itself is, that there is no definite sum of money expressed to be payable by the rule itself. These rules are to have the effects of judgments, which are to charge the land; and therefore the sum to be so charged ought to be distinctly stated in the document which thus charges the land, so that purchasers or creditors may know what it is. Judgments are to bind the land from the time directed by law. But, when rules like this are made, they also ought to bind the land at the time they are entered, but, at the same time, there is nothing to inform any body of the charge: the amount may not be ascertained for a year afterwards."

The decision of the Court of Exchequer, in *Jones v. Williams*, 9 Dowl. P. C. 702, a different case, was in conformity with the opinion of the Court of Queen's Bench already stated.

The question then arose whether, by any means, an award requiring a certain sum of money to be paid, could be brought within the meaning of the section by any step taken on the part of the plaintiff, or successful party in the arbitration. Accordingly a mode was suggested by Lord Denman in the former case, in the following manner:—"There is no difficulty in giving effect to the act of parliament as to awards, if a proper case is made out: and that is, by calling on the delinquent party to shew cause why he should not pay a certain sum of money pursuant to the award. If that rule be made absolute, an execution may issue for the sum distinctly specified in the rule so to be obtained."

In conformity with this suggestion a number of cases have been brought before the Court; in which, as a matter of course, the rule has been granted in the manner proposed by his Lordship.

These decisions, however, it will be perceived, do not affect the question as to "costs," independent of or connected with the award. In *Jones v. Williams*, 9 Dowl.

P. C. 702, the opinion of the Court of Exchequer was thus expressed by Mr. Baron Parke:—"It seems to me, that according to the construction of the act, it does not apply to any costs, charges, or expences, except those which are ordered by the Court to be paid, and that it does not embrace cases in which something is necessary to be done in order to give the party a title to the money, but includes those only in which the obligation to pay the money appear upon the face of the judgment, decree, or order. But then it is argued, that when the Court orders the payment of costs, something must be done, in order to ascertain their amount before execution can issue. No doubt that it is so; but we must hold that costs are not liable to the same observation, as they stand upon a peculiar footing. When the legislature mentions "money, costs, charges, and expences," it means money decreed or ordered to be paid, together with the costs, charges, and expences, ascertained in the usual way by the officers of the Court. That point, it is unnecessary to decide; but I am of opinion, that with respect to costs, it is enough if they are ascertained by the officer of the Court, and that it is not necessary that there should be any order to pay after the officer has taxed them."

The result of this judgment therefore is, that where there is a rule of Court ordering costs to be paid, as soon as the proper officer has ascertained the amount, the party entitled under the rule may issue execution on the rule for the amount, without any further proceeding.

In *Doe d. Steer v. Bradley*, p. 157, *post*, Mr. Justice Patteson, last Michaelmas Term, allowed a rule *nisi* to be granted, calling on the party against whom the Master's *allocatur* had been made, to shew cause why he should not pay the sum mentioned in that instrument. The reason why the application was made was that the party could not be served personally with the *allocatur*, so as to obtain an attachment. In that, as well as *Jordan v. Berwick*, MS., his Lordship said that as this proceeding was in lieu of the proceeding by attachment, the service ought, if possible, to be personal; but if not, then on a special affidavit of facts, it would be for the Court to determine whether enough had been done to entitle the party to make the rule absolute. And in *Barton v. Mendizabal*, M. S., in the same term, his Lordship said that it need not be made part of the rule that the applicant should be at

liberty to issue execution, or that he forewent his remedy by attachment. And in *Kerr v. Geston*, M. S., the same learned Judge, in the same term, held that on shewing cause against a rule nisi for non-payment of money pursuant to an award, it was competent to take objections to what appeared on the face of it, in the same manner as on shewing cause against a rule nisi for an attachment for its non-performance.

It is hoped that this summary of the decisions on a very important provision of the 1 & 2 Vic. c. 110, may be useful to our practical readers.

THE PROPERTY LAWYER.

PRINCIPAL AND AGENT.

WHERE a party employs another to act as agent, it is on the faith that such agent will act in the matter purely and disinterestedly for the benefit of his employer.

Where *A.* placed himself under the advice of a dealer in English and foreign stock, and the latter advised purchases and sales of stock, which advice *A.* followed, it afterwards appeared that those purchases and sales were purely nominal transfers and re-transfers of the dealer's own stock, the difference being settled in account, and it was decided that a Court of Equity might interfere to compel an account between the parties, and to set aside the transactions that had taken place, on the ground that the dealer stood in a situation of advantage, which Equity will not allow to an agent dealing with his principal. *Brookman v. Rothschild*, 3 Sim. 155; 2 Dow & Cl. 188; 5 Bli. 165.

So, also, where *A.* employed *B.*, a stock-broker, to purchase some canal shares, *B.* apparently bought them from *C.*, the ostensible owner, but who afterwards turned out to be a mere trustee for *B.* The Court after a lapse of several years, without entering into the question of the fairness of the price, held that the transaction was void on grounds of public policy, and set it aside with costs. "It is said," said Lord Langdale, M. R., "that this is every day's practice in the city. I certainly should be very sorry to have it proved to me, that such a sort of dealing is usual; for nothing can be more open to the commission of fraud than transactions of this nature. It frequently happens that the same person is agent for both parties, in which case he holds an even hand, and acts, in one sense, as arbitrator between them; but if a person employed as agent, on account of his skill and knowledge, is to have, in the very same transaction, an interest directly opposite to that of his employer, it is evident that the relation between the parties then becomes of such a nature as must inevitably lead to continued disappointment, if not to the continued practice of fraud. I am of opinion

that these transactions cannot be supported; not only are they in themselves so extremely likely to lead to the commission of fraud, as to make them directly against the policy of the law, but in those cases which have occasionally come to the knowledge of the Court, and which fortunately have not been frequent, it has invariably been found that fraud has been the result of such transactions. It is not necessary to shew that fraud was intended, or that loss afterwards took place in consequence of these transactions, because the defendant, though he might have entertained no intention whatever of fraud, was placed in such a situation of trust, with regard to the plaintiff, that the transaction cannot, in the contemplation of this court be considered valid. Being for these reasons of opinion that these transactions cannot stand, the next question is, whether any thing has taken place to deprive the plaintiff of the right of saying to Mr. Peppercorne, 'put me in the situation in which I was before; whether these shares were of greater value or not, I do not chose to be at the risk of selling the shares which now stand in my name; they have been transferred to me in a manner which the law does not warrant, and I desire to be placed in the situation in which I should have been, if the transaction had never taken place.' First, with regard to the length of time; there is nothing to shew that this was discovered before the year 1837; it is not sufficient to say that the plaintiff, being a proprietor, might have gone to the books, and made a search, and found out all these matters, or that the son, being a director, and having the books before him, might have made the search; the knowledge, in my opinion, ought to have been brought home to the plaintiff, and this has not been done." *Gillet v. Peppercorne*, 3 Bea. 78.

REFORM IN THE CHANCERY OFFICES.

WE observed in our last number that the further alterations intended in the business of the Court of Chancery should commence with effecting improvements in the offices of the Court, as the *machinery* by which its operations are effected. And we noticed a pamphlet by "an Equity Draftsman," in defence of some of the most important of those offices. We have now to request the attention of our readers to another publication called "Suggestions for amending the Practice and Proceedings in the Court of Chancery, with a view to remedy expence and delay, and particularly that of the Six Clerks' and Masters' Offices."*

The writer is evidently a practical man, and many of his suggestions are valuable. A considerable part of them, however, will

* This pamphlet has been published by Croft and Blenkarn, 19, Chancery Lane.

be found in the works of former writers, and familiar to our readers; but they are here conveniently collected and arranged, and we shall no doubt promote the laudable object of the writer, and serve the cause in which he is engaged, by selecting such parts of his plan as appear to us to be practically useful.

We shall for the present confine our extracts to the office of the *Six Clerks* and *Sworn Clerks*.

Our author says:—

Let two persons be appointed, to be called Clerks of the Records, who shall transact the business of the Six Clerks' Office, unless where otherwise provided, at a salary of (say) 1500*l.* per annum each, and call the office "the Record Office of the Court of Chancery." Let ten (or, if necessary, twenty) clerks be appointed for the purposes herein-after mentioned, to assist the Clerks of the Records, at a salary of 100*l.* each per annum.

BILLS to be filed with the clerks of the records at the record office, and the name and residence of the solicitor filing the same to appear in the book to be kept for that purpose.

SUBPŒNAS to be issued by, and served on the respective solicitors, excepting the subpoena to hear judgment, which is to be served on the respective parties, either personally, or by leaving same at their dwelling-house or place of abode. And it shall be necessary to state in the affidavit of service of subpoena, in case the same shall not be personally served, that the party serving the subpoena has made diligent inquiries, and believes that the person intended to be served was *then living*, and resided at the place where the subpoena was served.

APPEARANCES to be entered with the clerks of the records in an appearance book, to be kept by them for that purpose. Notice to be given by the defendant's solicitor to plaintiff's solicitor of his having appeared.

COPIES OF BILLS to be made by the plaintiff's solicitor, and delivered to defendant's solicitor.

ANSWERS.—Time for putting in answer to commence from the delivery of the office copy.

Defendant's solicitor, within the time allowed, to prepare answer, which is to be sworn before a master extra in the country, or in London at the public office by a clerk to be appointed for that purpose, instead of a Master in Chancery attending at the public office.

Answers to be sent to town by post or otherwise (if from the country), and filed by the defendant's solicitor at the office of the clerks of records: those sworn in town, to be also filed with the clerks of the records.

WARRANTS to be taken out before the Master for time to answer, and the Master to have discretion, without affidavit, to allow further time without subjecting the party to any special terms.

Defendant's solicitor to give notice to plaintiff's solicitor that answer filed, and if no notice given, attachment may issue. It shall be necessary to state in the affidavit upon which the attachment, for want of answer to an original, or amended, or supplemental bill or bill of revivor, is grounded—the day of the month and year on which such respective office copy bill was delivered.

After defendant's time to answer has expired, no attachment to issue unless three clear days' notice in writing have been given to the opposite solicitor.

Defendant's solicitor to furnish copy answer to plaintiff's solicitor within seven days from the filing thereof, inclusive of the day of such filing, and the time within which the answer is to be deemed sufficient to be reckoned from the delivery of the office copy.

EXCEPTIONS to answer to be prepared in the usual manner, and copy thereof marked as an office copy by the Clerk of Records, as above, and to be delivered to defendant's solicitor.

AMENDMENT OF BILLS to be made by the Clerks of the Records, in the record. Plaintiff's solicitor to call for office copy and amend same, getting the amendments marked in the usual way, and then deliver it over. At the time of delivering the office copy amendments, plaintiff's solicitor to give notice to the respective solicitors of the defendants, whether or not a further answer is required; the time for answering such amended bill to be reckoned from the delivery of such notice. No subpoena to answer such amended bill to be necessary, except as to any new defendants.

REPLICATION to be entered by the clerk of the records in a book to be kept at the office for that purpose, and called the replication book, on the solicitor giving him a note to that effect; this book to be open for searches by the solicitors of the Court. Notice of filing replication to be given to the opposite solicitors whose answers are replied to.

SUBPŒNAS to rejoin to be issued by the solicitors at the Subpœna Office, and served upon the opposite solicitors by leaving the same at their office.

EXAMINATION OF WITNESSES IN TOWN.—Notice to be given to the respective solicitors of the name, description, and place of abode of each witness, to enable them to cross examine same.

Commissioners to be named by each of the solicitors, and to be agreed upon between them, and if they disagree, clerk of the records to strike names. Commission to be prepared by the plaintiff's or defendant's solicitor, and sealed at the Subpœna Office in the same manner as subpoenas are sealed.

Commissions for taking the examination of parties to be issued in the same way, and the same to be sealed on production of the Master's allowance of the interrogatories on the engrossment, without any order or report being necessary as now required.

Commission for examination of witnesses to be sent down into the country, and depositions

to be taken as at present, and to be returned by messenger under the seals of the commissioners, and filed with the clerk of the records, who is to deliver out copies, when publication is passed, to the different solicitors requiring the same, for which he is to be paid 4d. per folio.

Rule to produce witnesses, and rule to pass publication, to be entered by the clerk of the records in a book, to be kept for that purpose at the record office, called the rule book, on the plaintiff's solicitor producing a note for that purpose.

All consents to enlarge or to pass publication to be entered in the rule book, and signed by the respective solicitors in the same manner as is now done by the Clerks in Court.

CAUSE TO BE ENTERED by the solicitor in the cause book.

Subpœna to hear judgment to be issued by the solicitor and served on the parties in the cause. Affidavit of service to be made to the effect before stated.

DEMURRERS AND PLEAS to be filed in the same way as answers, and copies delivered by the solicitors to the opposite solicitor.

Demurrers and pleas to be set down with the registrar by the solicitor.

No order to set down demurrer or plea to be necessary, but notice in writing to be given to the opposite solicitor, not later than the day after such demurrer or plea is set down, and an affidavit of service of such notice to be made.

DOCUMENTS TO BE DEPOSITED with clerk of records, and produced by him or his deputy in the same manner as now done by the Clerks in Court.^a The clerks of records to make copies thereof or extracts therefrom at 4d. per folio.

All certificates of pleadings filed, to be given by the clerk of records and delivered to the solicitors requiring the same.

All petitions of rehearing or appeal to be signed by the solicitor for the appellant, or by the appellant himself, undertaking to pay such costs as the Court shall award.

SERVICE OF NOTICES, &c.—All special petitions, notices of motions, warrants, copies of orders, and other proceedings, to be served on the opposite solicitor by leaving same at his office. Orders for sequestration nisi, and orders for not producing and leaving papers, not putting in examination to interrogatories, and all other orders on which it is intended to found process of contempt, to be served *personally* on the solicitor of the party.

Answers, and pleas when required to be put in upon oath, to be sworn at the public office^b in London, or before a master extra in the country, and filed with the clerk of the records.

Examinations in a cause, upon interrogato-

^a The production of documents might more conveniently take place at the solicitor's office.

^b The public office should be abolished, and the oath administered either by the record keeper, or solicitors in London, authorized as masters extra.—Ed.

ries settled by the Master, to be sworn either at the public office before the clerk aforesaid, or before a master extra in the country, to be brought up by messenger, and left in the Master's office to whom the cause is referred.

Solicitors to draw up dockets of decrees, and obtain the signature of the judge who pronounced the decree or order, and enrol them according to the present practice of the Court.

The clerk of the records to issue attachments and other processes of contempt, on note for that purpose from the solicitor, in the same manner as now done by the clerks in Court: such writs to be sealed at subpœna office, and clerks of records to be responsible for the regularity of such proceedings.

All consents to petitions to be signed by the solicitors, as is now done by the clerks in Court.

The clerks of records to perform all the other duties at present performed by the Clerks in Court (if any) not here enumerated.

AS TO THE TAXATION OF COSTS.

The rule for taxing costs between "party and party" to be abolished, and a party on taxation to be allowed all his *reasonable and proper* costs, charges, and expenses incurred by him in the progress of a suit, or in any proceeding or matter not in a cause.

Let four or six officers be appointed as taxing officers, with salaries of 800*l.* a-year each.

We have omitted some of the details suggested, and think the salary of the taxing officer should be 1200*l.* or 1500*l.*, in order to secure competent persons.

POINTS OF LAW AND PRACTICE BY QUESTION AND ANSWER.

PAROL EVIDENCE TO EXPLAIN AGREEMENTS.^a

1. The day for the completion of the purchase of an interest in land, inserted in a written contract, cannot be waived by oral agreement, and another day be substituted. *Stowell v. Robinson*, 3 Bing. N. C. 929; S. C. 5 Scott, 196.
2. A written agreement was made to demise from the following "Lady-day," and a notice to quit on the "6th of April" was served. Parol evidence was received, that by "Lady-day," the parties meant "Old Lady-day." The written agreement was not under seal. *Due d. Peters v. Hopkinson*, 3 D. & R. 507.
3. Parol evidence of the fact of tenancy is admissible, although the tenant held under a written agreement. *Rex v. Inhabitants of the Holy Trinity*, 7 B. & C. 611; S. C. 1 M. & R. 444.
4. Parol evidence to explain an imperfectly worded written contract, even where some parts of it were difficult to be understood alone, is not admissible. The chief question in the cause was the nature of the contract, which had been rendered doubtful by partial

and incomplete alteration, and which, therefore, seemed to require to be supplied and perfected by some such additional words as the evidence rejected would have furnished. The agreement also contained dubious words, involving it in uncertainty, as to whether it purported to be a sale of particular merchandize to arrive by a certain vessel, or of such merchandize generally, whenever the contracting party should receive sufficient to supply the purchaser with the quantity. *Halliley v. Nicholson*, 1 Price, 404.

5. The Statute of Frauds does not exclude parol evidence, that a written contract for the sale of goods, purporting to be made between *A.* the seller, and *B.* the buyer, was on *B.*'s part made by him only as agent for *C.* *Wilson v. Hart*, 7 Taunt. 295; S. C. 1 Moo. 45.

6. The printed conditions of sale of timber growing in a certain close, did not state any thing of the quantity; parol evidence that the auctioneer at the time of sale warranted a certain quantity, is not admissible. *Powell v. Edmunds*, 12 East, 6.

7. Parol evidence is not admissible, to prove an additional rent payable by a tenant, beyond that expressed in the written agreement for a lease. *Preston v. Merceau*, 2 Bla. 1249.

8. By agreement in writing, *A.* contracted to sell *B.* several lots of land, and to make a good title to them; and a deposit was paid. It was afterwards discovered that a good title could not be made to one of the lots, and it was then verbally agreed between the parties, that the purchaser should waive the title. The vendor delivered possession of the whole of the lots to the purchaser, which he accepted. In an action brought by the vendor to recover the remainder of the purchase-money, the declaration stated that the defendant agreed to deduce a good title to all the lots except one, and that the purchaser discharged and exonerated him from making out a good title to that lot, and waived his right to require the same; but it was held, that oral testimony was not admissible to show the waiver of the purchaser's right to a good title to that lot. *Goss v. Lord Nugent*, 5 Barn. & Adol 58; S. C. 2 Nev. & Man. 28.

9. By a memorandum dated November, 1822, *A.* an attorney, agreed with *B.*, for a valuable consideration, to take *C.*, the son of *B.* into partnership, as attorneys and solicitors for ten years, and to allow him a moiety of the profits. The memorandum did not state when the partnership was to commence. *C.* was not admitted as an attorney until April, 1823, but he conducted the business in the name of *A.* from January, 1823. In an action by *A.* against *B.* for part of the consideration money, it was held, 1. That the agreement, upon proof of *C.* not being admitted as an attorney till after its execution, was illegal within 22 G. 2, c. 46, s. 11, and void; 2. That such proof was properly admitted on the part of the defendant; 3. That proof on

the part of the plaintiff that the agreement was to be kept as an escrow, and not acted upon till after *C.*'s admission, was inadmissible; and 4. that if such proof could have been admitted, the declaration which described the agreement as one to commence *in present*, could not be supported by parol evidence that it was to commence *in futuro*, the agreement being for more than one year, and the whole of it therefore required to be in writing by 29 C. 2, c. 3, s. 4. *Williams v. Jones*, 7 D. & R. 543; S. C. 5 B. & C. 108.

REPEAL OF CERTIFICATE DUTY.

I am strongly inclined to think that the most advisable course to pursue, to endeavour to get rid of the (*war-tax*) Certificate Duty will be to point out a substitute—this is, however, by no means an easy task.

The fairest mode would be to impose a duty on every action or suit commenced. This would remedy the existing hardship, as a man of a practice of 300*l.* a-year now pays as much as one of three thousand.

I believe that a modification of the existing stamp duties on conveyances would tend to increase the revenue. If the duties on all conveyances under 300*l.* or 500*l.* were diminished, and those on higher sums increased, the Chancellor of the Exchequer would gain much. At present there is no proportion, and the stamp duties on small conveyances amount to as much as the client ought to pay for the deeds. I think this alone would countervail the loss of the certificate duty.

The stamps on voluntary settlements of stock might fairly be increased—the object of these deeds being generally to avoid probate duty.

I confess I do not see why there should not be a moderate stamp on the transfer of stock. I am aware Lord Althorp, after announcing his intention to do so to parliament, abandoned the measure at the instigation of the stock brokers, as tending to their great inconvenience, if not ruin. I nevertheless think it a fair object to point out as a means of obtaining the amount of the certificate duty.

At all events, I am decidedly of opinion that something should be attempted, for without agitation I see no prospect of its being abolished. L.

The thanks of the members of the legal profession are due to those gentlemen whose end and aim, and the gist of whose communications, is the abolition of that iniquitous impost, "the Certificate Duty."

In the letter subscribed "Att. ad Leg." (p. 54, *ante*), a succinct and lucid history of "the Rise and Progress" of the duty is given. To that letter therefore I beg to refer. I think if nothing further be done towards the amelioration of the existing law, as relates to this tax, "the original scale" ought, in common justice, to be

adopted. It certainly does appear any thing; but just, that the necessity (as applied to this particular branch of the revenue) for such an increased imposition, ceasing, the tax itself should still continue to be levied as imposed by stat. 55 Geo. 3, c. 184.

The clause contained in Lord Langdale's proposed bill, relating to articulated clerks (*vide* letter before referred to), renders it doubly necessary, (may I not say *imperative*?) for those members of the legal profession who will be thereby affected, (and they are exceedingly numerous) to be "up and doing" in this too long neglected but still not less important subject.

The chief difficulty to be encountered in cases analogous to the present is always felt to be in the commencement, as, to use a proverbial expression, but one that may, nevertheless, contain some meaning, "what is every body's, is nobody's work."

I trust that this communication may have some effect in arousing my legal brethren to a fuller sense of the injustice of this imposition. This once effected, "the pressure without" will soon put a period to its existence, and "the Certificate Duty" will be spoken of as one of the things that has been, but is not.

A YOUNG SOLICITOR.

MODE OF CONDUCTING THE EXAMINATIONS.

To the Editor of the Legal Observer.

Sir,

ALLOW me to suggest, through your columns, the adoption, in some measure, of the Oxford system, in the future examinations of persons applying to be admitted as attorneys. At that University there are two distinct examinations of candidates for a degree; the first is intended for those persons who go up for a common degree; the second for candidates for honors.

With regard to the first, there is a wide field of classical literature open to candidates, from which they are allowed to choose their own authors, subject to certain restrictions as to the sufficiency in number and quality of the books.

The second examination is one of several days' duration, and the method less dependent perhaps upon any fixed principle, the object being rather to test the capacities of the examinees in the generalization of the subject matter (of which the books they have offered themselves in, treat,) than as is the case in the first examination, their memory of the strict letter contained in those books.

I would then propose the following method of examination for simple admission:—Let a list of books, none of them mere books of practice, be set forth by the examiners, from which candidates shall be allowed to make their own selection, subject only to the one restriction at to numerical sufficiency—the minimum on all possible combinations to be fixed by the examiners, and set forth in the

same list. The candidates also to give in a list of the books in which they offer themselves to be examined, one term before that in which the examination takes place. Many other rules would be necessary, to enter into the details of which is not my object.

The rough sketch which I have given of the system might, I am sure, be adapted with certain modifications to the legal examination, most beneficially for the candidates, the profession, and the public. Amongst its manifold advantages over the present system, I might point out the putting all persons on an equal footing as to the means of acquiring the knowledge requisite for obtaining a certificate, the exclusion of the cramming method of preparing for examination, and the ensuring of a rigid examination of future aspirants in the theory and principles of the law of England, instead of an almost *pro forma* investigation of their acquaintance with a few points of practice, easily acquired and still more easily forgotten.

I have said nothing on the manner of conducting the examination for honors, because I think all changes ought to be introduced gradually, and that the time is not yet come for that species of examination to be adopted with effect, notwithstanding the contrary opinion entertained by some ambitious gentlemen who have favoured your readers with their views on this subject. In conclusion, I have only to observe that I have waited long in expectation of suggestions on this head, which I could have wished to have proceeded from more able hands; as it is, however, the insertion of this letter may call attention to the subject.

AN ATTORNEY.

MOOT POINTS.

APPRENTICE.—PREMIUM.

I HAVE much pleasure in being able to assist a correspondent at p. 136. The case to which he alludes is that of *Rex v. Mahe*, 5 Nevill & Manning, 241. I was consulted a short time since by a client under similar circumstances, and I advised him, that the magistrates of Liverpool in consequence of that decision had held, that they could not interfere in disputes between master and apprentice, where no premium had been paid with the apprentice. My client not being satisfied with this construction of the law, determined on taking the opinion of the highest law officer of the Crown on the point, and to a case submitted by me to the Attorney General, I obtained the following opinion:

"The Court of Q. B. decided in the case alluded to, that the form of the expression 'no larger sum than,' imported *some sum*; and that the case of 'no premium at all,' was not included within it. If they so decided where an exemption from duty was claimed, I think *a fortiori* they ought so to decide where a

summary jurisdiction is resisted on this ground. Assuming the decision of the Court to be correct (which we now must do) I am of opinion that the view taken by the magistrates is correct. FRED. POLLOCK, Temple."

I hope the above information may be of service, and though I by no means approve of the decision, yet as long as the cited case remains on the reports without being overruled, I apprehend we are bound by it; but to guard against this question in future, I now always insert a nominal premium in the indenture of apprenticeship.

AN OLD SUBSCRIBER.

The above case has excited great interest in London, the stipendary magistrates deciding against the magistrates' jurisdiction; but I believe, the Lord Mayor, acting under his legal adviser, has decided in the old way in favour of the jurisdiction.

PROOF.—BANKRUPTCY.

Under a recent bankruptcy, a debt arose upon several promissory notes issued by the bankrupts (who were bankers), received by the holder not from them, but from third parties, in the course of business. The notes were in this form:—"I promise to pay the bearer on demand 5*l.*, value received. For A. B. & Co. (signed) X. Y." The party signing and making the promise is not one of the bankrupts, but a clerk in the establishment, and on that ground it has been supposed that a *third* holder of such notes could not prove them against the bankrupts. See *Hall v. Smith*, 1 B. & C. 407. As this is an important point, perhaps some other correspondent will consider it.

INQUIRER.

JUDGMENTS.—LEASEHOLDS.

I beg to inquire whether, under the 1 & 2 Vict. c. 110, and 2 Vict. c. 11, judgments become a charge on *leasehold* estates immediately they are registered as directed by the act? At a sale by public auction, A. B. purchased from the assignees of a bankrupt some leasehold property, in Middlesex, for 400*l.*; the estate is, *with other property*, in mortgage for 900*l.*; the sale is made with the concurrence of the mortgagee. The usual search has been made in the Middlesex Register Office and in the new Register Office under the above acts, and at the latter place several judgments appear registered, but only two of which were entered up more than one year prior to the act of bankruptcy. The judgments do not appear at the Middlesex Register Office. S. A.

PEW RENTS.

A body of dissenters build a chapel, and of course their remuneration must be through the medium of pew rents. The rents of these pews are payable quarterly, though not under a written agreement. Should a tenant refuse to pay his rent at the end of a quarter, and yet

continue to occupy the pew so let to him, have the trustees any power to *eject* their refractory tenant, or to *recover* the rent due to them; or would they be justified in letting the pew to another person? H. V. C.

SUPERIOR COURTS.

Lord Chancellor.

STATUTE.—CONSTRUCTION.—PRACTICE.—DISTINGUAS.

The object of the distingwas in the Court of Exchequer in Equity, was to restrain the transfer of stock until a bill could be filed for an injunction; and if the bill was not filed in due time, the Bank would not regard a second distingwas. So, under the act transferring the Exchequer jurisdiction to this Court, a party is not to have a second restraining order, and to entitle him to apply for an order to restrain the transfer of stock under the 4th section of the act, he should have such a case to sustain that order as would entitle him to an injunction on a bill.

This was a motion to discharge, for irregularity, an order made by the Lord Chancellor on the 1st day of November last, restraining the governor and company of the Bank of England from transferring or paying dividends on various stocks standing in the Bank books in the name of David Munro, deceased, and amounting altogether to the sum of 39,000*l.* The order had been granted on the petition of Mr. Jean Baptiste Amyot, who claimed to be the assignee and holder of a bond for 3000*l.*, granted in the year 1812, by the said David Munro, the principal and interest of which now exceeded the sum of 9000*l.* Soon after Mr. Munro's death in 1834, Mr. Amyot applied to his widow and executrix for payment of the alleged debt, and not succeeding in that application, he, in 1836, brought an action, to which she pleaded *plene administravit*, and also that her husband and testator never executed the bond; and if he did, that the plaintiff had no interest in it. Mr. Amyot being informed of the large sum standing in the public funds in the testator's name, and that Mrs. Munro regularly drew and vested the interest in other funds in her own name, sent a commission to Canada, where the bond had been executed, to obtain evidence of that fact, &c.; and he also filed a bill for discovery in aid of his action, against Mrs. Munro in the Court of Exchequer in Equity, having previously, in August last, obtained a *distingwas* on the stock in that Court, according to the then existing practice, against the Bank and Mrs. Munro. The act for abolishing the Court of Equity in the Exchequer being about to pass, no proceeding was taken on the bill, and the *distingwas* was to expire on the 1st of November, when Mr. Amyot obtained the order from the Lord Chancellor under the 4th section of the act (5 Vict. c. 5) "to make

further provisions for the administration of justice.”^a

Mr. *Richards* and Mr. *Wilbraham*, for Mrs. Munro, in support of the motion.—Amyot could not be said to be “a party interested” in the stock by being merely a plaintiff in an action, or having filed a bill in equity in behalf of himself and other creditors. The 4th section of the act confined the right to this summary proceeding to “a party interested,” and for the purpose of the affidavit prescribed by the orders of the 17th of November,^b to be made by a person applying for a *distringas*, the party must be *bond fide* and beneficially interested, which a person, merely alleging a demand could not be held to be, until after verdict and judgment, or decree. [The Lord Chancellor.—The Exchequer in Equity granted the *distringas* without affidavit. The form now settled by this Court is, that a party must swear that he is beneficially interested.] The facility in the Exchequer produced great injustice. [The Lord Chancellor.—It often prevented great injury.] The question here is, whether this party is beneficially interested in these funds, to be entitled to restrain the Bank and the party legally entitled to the stock from dealing with it. The order was confined to the stocks standing in the testator’s name, and Mrs. Munro swears in her affidavit, in support of this motion, that she has no intention of transferring it. Amyot, on the 9th of December, filed a bill in this Court against Mrs. Munro, praying for an account of her testator’s estate, and that she may be restrained from transferring this stock; but that bill could not sustain the order made in November, if he then had no right to that order. If he had a case, why not proceed on that bill to obtain an injunction in the usual way, without reference to the proceedings under the act 5 Vict. c. 5? In that case the party should show a right to detain the fund, which he does not show here.

Mr. *Wakefield* and Mr. *Beales*, for Mr. Amyot, supported the order. After the false plea put in by Mrs. Munro to the action in 1836, Amyot was justified in believing that she would dispose of these stocks, and she did not deny by her affidavit that she intended to transfer them: she only swears she did not intend to transfer them to avoid this demand. After the discovery was made of so much stock standing in the husband’s name, a *distringas* was obtained in the Exchequer, and served on the Bank, with the intention of obtaining an injunction on a bill to be filed in that Court. But that *distringas* fell upon the abolition of that Court. It was the practice there to obtain a *distringas*, and then file a bill and extend the *distringas*. That was the form of proceeding taken in this case in this Court, to which the Equity Exchequer jurisdiction was transferred. The *distringas* was granted on the 1st November, and a

bill has been now filed. Amyot’s demand gave him sufficient interest in the fund, and Mrs. Munro’s conduct justified him in putting a *distringas* on the stock. [The Lord Chancellor.—The question is, have you made such a case as would entitle you to put a bill on the file, and obtain an injunction on it? The object of the clause in the act, was to enable a party interested to prevent the transfer of stock, without giving notice to the other party, and before bill filed, but in such a case only as would entitle him to an injunction on a bill.] The conduct of Mrs. Munro, in putting in a false plea, when so large a sum was standing in her testator’s name, amounted to a fraud, and would form grounds for an injunction. By the fifth section of the act, this court was meant to be substituted for the Exchequer. The fifth section was, in truth, intended to supersede the fourth, which, however, was left in the act by mistake.

The Lord Chancellor seemed to be of that opinion. He postponed his judgment until he should consult the other judges of the court on the course it would be advisable to pursue.

His Lordship, on a subsequent day, after stating the course of proceeding that had been pursued in this case, said it was the practice of the Bank of England to regard the *distringas* from the Exchequer as a mere notice not to part with the stock therein specified, and that the restraint was considered as removed, unless a bill was filed within eight days. When that period expired, without a bill being filed, the party had no right to sue out a second *distringas*, or if he did, the Bank would not pay any attention to it. Now, if the object of the fourth and fifth sections of the act was as he understood them, to transfer to the Court of Chancery the jurisdiction hitherto exercised by the Court of Exchequer, a party had since that act came into operation, the power of suing out a *distringas* under the fifth section, or of applying to the Court under the fourth section. There was not any reason, however, to suppose that the legislature intended to place a party in a better situation than he would have been in if the act had not passed at all; and looking at this case in that view, he could not think that that party had placed himself in a situation to sustain an injunction, and, therefore, that this order must be discharged with costs. He said he would take an early opportunity of consulting with the other judges in equity, for the purpose of agreeing on some fixed rule for their guidance in future applications under the act.

In re Amyot, Sittings at Lincoln’s Inn. December, 1841.

Rolls.

EQUITABLE MORTGAGE.—STATUTE OF LIMITATIONS.—SETTLED ACCOUNT.

Where a mortgage account has been settled in error, and the deeds have been handed over without the mortgagor’s satisfying a sum charged upon them by way of equitable lien, the Court has power to

^a See the act, 22 L. O. 484, 499, and 514.

^b Ante, p. 35. See also pp. 49, 87, and 115, ante.

rectify the mistake, and the amount claimed being a charge upon land, will not be barred by the Statute of Limitations.

The plaintiff in this case was the executor of a mortgagee named Williamson, who during his life, had advanced to the defendant various sums of money on security of the estate in the pleadings mentioned; the first of which, was a sum of 1000*l.*, for which a legal mortgage was executed by the defendant; and the second, a sum of 350*l.*, for which a further charge was also executed. Williamson then advanced, as was alleged by the bill, two further sums of 200*l.*, and 150*l.* on security of the estates; but no deed was executed respecting them. In the year 1831 Williamson died, having appointed the plaintiff his executor, and shortly after his death, the defendant proposed to pay off the amount due to Williamson's estate, and to assign the mortgage to a third party. A meeting accordingly took place, when an account was drawn up and settled, by which it appeared, that the amount due to Williamson's estate for principal was 1,500*l.*, and on this and the interest then due being handed over to the plaintiff, he executed a transfer of the mortgage. This account was made out by a solicitor named Peppercorn, who had always acted as the agent of Williamson, and also of the defendant, and who the plaintiff supposed, was perfectly acquainted with all transactions between them. In making up the account, no notice was taken of the 150*l.* advanced by Williamson, and the plaintiff having afterwards discovered, on looking over his papers, a memorandum in the defendant's hand-writing, acknowledged the advance of that sum on security of the estate, immediately applied to the defendant for payment of it, and he having disputed his liability to pay it, the present bill was filed, and prayed that he might be decreed to pay that sum with interest to the plaintiff, or that it might be deemed a charge upon the estate, subject to the mortgage transferred by the plaintiff as above-mentioned. The defendant opposed the claim on several grounds, but principally on the ground of the sum claimed having been included in the 1,500*l.* paid to the plaintiff, and he also suggested that the account having been settled and a release given, it could not be opened, and that more than six years having elapsed since the plaintiff's right of action accrued, the claim was barred by the statute.

Pemberton and Mylne for the plaintiff, contended, that the plaintiff not being so well acquainted with the affairs of his testator as Peppercorn, the solicitor, might fairly rely upon his settlement of the account, and such settlement being clearly shewn to be erroneous, the plaintiff was entitled to ask the Court to correct the mistake. *East India Company v. Newe*, 5 Ves. 173; *Same v. Donald*, 9 Ves. 275; *Storey's Equity Jurisprudence*, 148; and there being an equitable mortgage for the sum in question, to have that charge revived. *Ex parte Morgan*, 12 Ves. 6; *Gregory v. Russell*, 6 Mad. 186. The charge also being

on land, could only be barred by the 3 & 4 W. 4, c. 27, s. 14, after the lapse of twenty years. *Brocklehurst v. Jessopp*, 7 Sim. 438; *Higgins v. Scott*, 2 B. & Ad. 413.

Kinderley and Purvis, for the defendant insisted that the 150*l.* formed part of the principal sum of 1,500*l.* which had been allowed on the settlement of the account, and urged, that it was the duty of the plaintiff to have examined Peppercorn, who was the only party capable of explaining the transaction.

The Master of the Rolls said it was difficult to ascertain from the evidence before the Court the real state of the case. If the facts were as represented by the plaintiff, he was entitled to the relief prayed by the bill; but there were circumstances of suspicion which rendered further enquiry necessary, and there must therefore be a reference to the master, to enquire whether any and what sum was due from the defendant to the plaintiff, with liberty to the Master to state special circumstances, and then Peppercorn might be examined.

Alington v. Pain, Dec. 6, 1841.

Vice Chancellor of England.

PRACTICE.—CONSTRUCTION OF ORDER 30 OF 26TH OF AUGUST, 1841.

Trustees under a settlement for the purpose of executing powers of appointment, but not having a power of sale vested in them, are not trustees within the meaning of Order 30 of 26th August, 1841.

From the pleadings in this case it appeared, that a sum of 5000*l.* had been settled on the marriage of Mrs. Turner, the mother of the parties now interested in the fund, upon trust to pay the interest and dividends to her for life, and after her death to her husband, with remainder to her children and grandchildren, in such shares and proportions, and to be payable in such manner as she should appoint; and the settlement contained a power for the trustees to invest the 5000*l.* in the purchase of lands, to be held upon the same trusts. In pursuance of this power, the 5000*l.* had been invested in the purchase of an estate, which was conveyed to the trustees, who now held it upon the trusts of the settlement. The husband and wife had both died, and the wife by her will, which was expressed to be made in pursuance of the power, had devised the estate to the trustees upon trust to sell, and after payment of all expences, to divide the produce between her three sons; and in the event of the death of either of them, then to divide the ~~same~~ or shares of such one or more of them as should die leaving issue between his or their children. Some of the parties beneficially interested under the appointment, and also some who were interested in default of appointment, being out of the jurisdiction,

Bethell now moved under the above order, for leave to have the cause heard, notwithstanding the absence of such parties.

The Vice Chancellor said the settlement gave

the trustees power to invest, but not to sell. The terms of the 30th Order were, that in all suits concerning real estate, which is vested in trustees by devise, and such trustees are competent to sell, they shall represent the persons beneficially interested; but in this case, the trustees were trustees under the settlement, and they had no power of sale—so that they did not come within the terms of the order.

Turner v. Hyde. December 10, 1841.

Vice Chancellor Wilgram.

APPOINTMENT OF RECEIVER.—EXECUTOR.

Where no probate or letters of administration have been taken out, the Court will appoint a receiver pendente lite in the Ecclesiastical Court, as a matter of course, unless special circumstances are shewn.

A testator made two wills, by the first of which, he named two persons, William and Simon Rendall, his executors; by the latter he named William alone. A suit was instituted in the Ecclesiastical Court, impugning the second will upon the ground of the testator's incompetency. The property consisted of debts, sums secured by mortgage, together with farming and household property.

Mr. S. Sharpe and Mr. Follett moved for a reference to the master to appoint a receiver of the estate of the testator pending the suit. Where there was property which might be injured in the interval, the motion was almost one of course. *Jones v. Goodrich*, 9 Law Journ. 120; 10 Sim. 327; *Wutkins v. Brent*, 1 Myl. & Cr.; *Wood v. Hitchings*, 2 Bea. 293.

Mr. Temple and Mr. Blunt resisted the appointment, one executor being named in both wills, and the litigation in the Ecclesiastical Court not being likely to extend beyond the next term. The Court always exercises a discretion. *Wills v. Rich*, 2 Atkyns, 285; *Mar v. Littlewood*, 2 My. & Cr. 454.

His Honor said there were two rules which might be stated as settled on the subject; first, that where probate or administration had been granted, a receiver would not be appointed by the Court pending a *bond fide* litigation for recalling the letters or probate, unless a special case was made out. The other was almost the converse, namely, that if no probate or administration had been granted, the appointment of receiver was of course, pending a litigation to determine the right of the representative, unless special circumstances were brought before the Court. His Honor referred to *Jones v. Frost*, 3 Mad. Rep. 1, decided by Sir J. Leach; also to Lord Redesdale on Pleading, pp. 135, 136, 4th edit. *King v. King*, 6 Ves. 172. *Twyford v. Traill*, 7 Sim. 92, and ordered that it should be referred to the master to appoint a receiver *pendente lite*, with liberty to any of the parties in the suit to propose himself.

Rendall v. Rendall, Dec. 16th and 18th, 1841.

Queen's Bench.

[Before the four Judges.]

DELIVERY OF JOINT STOCK SHARES.

*A. being possessed of a share in a public company, and being indebted to B., wrote to B. a letter containing the following words: "I will deliver the share on demand, having received 600*l.* for the same."* Held that this letter imported a past consideration, but required a demand for the delivery of the share to be made before an action was maintainable on the promise.

Case for not delivering a share in the Wood Pavement Company. The declaration stated, that the plaintiff was possessed of a share in the company, and that in consideration that the plaintiff had paid the defendant 600*l.* for said share, the defendant undertook and promised to deliver the same on demand; and then it averred that though the share had been demanded the defendant refused to deliver. At the trial of the cause before Lord Denman C. J., at Guildhall, at the sittings after last term, a letter written by the defendant to the plaintiff, was put in containing the expression, "I will deliver the share on demand, having received 600*l.* for the same." It appeared that the plaintiff had acted as a stock broker for the defendant, whose speculations had turned out rather unfortunately, and it was ascertained that at the settling day in September, 1840, he would have a considerable sum to pay for losses. The letter in question, which was dated on the 12th of September, was written in anticipation of the defendant having this sum to pay, and appeared to be written in answer to one from the plaintiff, announcing the amount of the losses, and asking for authority to receive from a man named Prosser the value of the wood paving share when sold. The settling day did not occur till the 15th of September, when the plaintiff actually paid a sum of 86*l.* on account of the defendant. A great deal of correspondence ensued between the parties, but there was no formal demand made on the defendant to deliver the share before the action was brought.

Mr. Creswell submitted that the plaintiff must be nonsuited. A demand here is necessary, and none has been made. The expression in the letter of the 12th of September, means that when the defendant shall have received 600*l.* in respect of the share, he will deliver the same on demand. This is not like the case of the promise to pay on the sale of goods. The law in that case imports a promise to pay the debt the instant it has been incurred; but this is a promise to deliver a certain chattel on demand. The party is not to deliver it immediately. It may be inconvenient to the other party to accept it immediately; and to him, therefore, is given the option of fixing the time of the delivery, by making the demand. But he must make the demand. The letter of the plaintiff respecting Prosser, strengthens the objection; for there the plaintiff asks not to recover the share, but the proceeds of it when sold.

Mr. Theiger and Mr. Warren, *contra*, insisted that the letter of the 12th September did not bear the meaning now sought to be put upon it, and that at all events there was no necessity for a demand. The moment the debt was incurred the liability arose. And the action itself was sufficient proof of a demand. If the declaration here had stated that *A.* having delivered the share, *B.* promised to pay 600*l.*, the debt would arise immediately. This case is exactly the converse of the one now supposed, and the declaration states that the plaintiff having paid the money, the defendant promised to deliver the share. This is not like the case of a promise to transfer a document or the like to it, but is a promise to deliver that which it is not denied is in the defendant's hands. It is exactly like the case of an agreement to deposit deeds, which the party is bound at once to perform. The case of *Berks v. Trippett*, decided that in the case of a mere debt, or duty, no demand was necessary.

Lord Denman, C. J.—The true meaning of the letter, is that the 600*l.* have been paid, and the promise is founded on that. But then it is a promise to deliver on demand. I am of opinion that a demand was necessary, and that there is no proof of a demand here. The plaintiff must be nonsuited.

Nonsuit.—*Green v. Murray*, M. T. 1841.

Queen's Bench Practice Court.

SERVICE OF RULE.—ATTACHMENT.—EXECUTION.—1 & 2 Vic. c. 110.

If the Master has allowed a certain sum as costs by his allocatur in an action of ejectment, and the party against whom the allocatur is made cannot be served personally, the rule for an attachment cannot be granted; but the party in whose favour the allocatur is made may obtain a rule for payment of the money, pursuant to 1 & 2 Vic. c. 110.

This was an action of ejectment. The plaintiff was unsuccessful in the action, and the Master taxed the defendant's costs at 3*7**l.* Attempts were made to serve the lessor of the plaintiff with the *allocatur*, but without success. The party on whom it was sought to serve it, shut himself up in his house, and would let no one in, nor could any one obtain access to him.

Sir John Bayley moved for a rule for an attachment, on an affidavit stating these facts. As it was impossible to serve the party personally, in consequence of his keeping himself concealed within his house, and no possibility existed of obtaining access to him, it was suggested that the rule for an attachment might be granted, notwithstanding the defective service.

Patteson, J., was not aware of any instance in which the Court had allowed personal service to be dispensed with, in granting an attachment. The defendant might, however, obtain a rule *nisi*, calling on the lessor of the plaintiff to show cause why he should not pay the sum mentioned in the *allocatur*. That rule

might be served at the residence of the party, supposing personal service not possible. If the rule should be made absolute, an execution could be issued upon it, pursuant to the 1 & 2 Vic. c. 110, rules for payment of money were made to have the effect of judgment.

Rule granted accordingly.—*Doe d. Steer v. Bradley*, M. T. 1841. Q. B. P. C.

AWARD.—ATTESTING WITNESS.—AFFIDAVIT OF EXECUTION.

If an attesting witness is required to make an affidavit of the execution of an award, a tender should be made to him of the affidavit, and the necessary expences attending the making it.

In this case, an agreement of reference had been made, and an attorney to one of the parties to the arbitration was an attesting witness. Subsequently, an award was made, and it was desired by the unsuccessful party to make an application to the Court to set aside the award. For this purpose, the affidavit of the execution of the agreements was necessary. An application for such an affidavit was made to the attorney, but no tender of the affidavit or his expences in making it were made. A rule to compel him to make the affidavit having been obtained,

James shewed cause, and contended that as the tender of the affidavit, and the attendant expences had not been made, the present rule could not be made absolute.

Pike supported the rule, and submitted that it was the duty of the attorney, he being an attesting witness, to make such an affidavit as the one required.

Patteson, J., was of opinion that as the tender in question had not been made, the present rule must be discharged, but without costs.

Rule discharged without costs.—*Ex parte Pike*, M. T., 1841. Q. B. P. C.

ADMINISTRATION BOND.—WRIT OF INQUIRY. 3 & 4 W. 4, c. 42, s. 16.

The Court allowed a writ of inquiry after judgment by default in an action of debt on an administration bond, breaches being suggested pursuant to the 8 & 9 W. 3, c. 11, s. 8, to be executed before the Chief Justice, instead of the sheriff, notwithstanding the 3 & 4 W. 4, c. 42, s. 16, but granted only a rule nisi for that purpose in the first instance.

This was an action of debt on an administration bond, given pursuant to 22 & 23 Car. 2, c. 10, s. 1. The defendant suffered judgment by default, and the plaintiff suggested breaches pursuant to 8 & 9 W. 3, c. 11, s. 8. By the 3 & 4 W. 4, c. 42, s. 16, writs of enquiry should in all cases of breaches suggested under 8 & 9 W. 3, c. 11, be executed before the sheriff, unless otherwise ordered by the Court or a judge.

Ogle applied for a rule to execute the writ in the present case before the Chief Justice of the Court, on the ground that the execution of it would necessarily raise many nice questions of law and fact, and therefore, that it would not be proper to execute it before the sheriff. The next question was, whether the rule for that purpose ought to be absolute in the first instance or only *nisi*.

Patteson, J., thought this case was a proper one to be tried before a judge of the Court, instead of the sheriff; but that the rule ought to be *nisi* in the first instance.

Rule *nisi* granted accordingly.—*The Archbishop of Canterbury v. Burlington*, M. T. 1841. Q. B. P. C.

**EJECTMENT.—SERVICE OF DECLARATION.—
LODGERS.—LANDLORD.—ACKNOWLEDGMENT.**

Where there are several lodgers in a house, and service of a declaration cannot be effected on them, it may be served on the person keeping the house.

A declaration in ejectment was served on a daughter of the tenant in possession on the premises, accompanied by the usual reading and explanation, previous to the same. After the term had commenced, the daughter made an acknowledgment that she had given the declaration to her father, and the Court held the service to be sufficient for a rule nisi for judgment against the casual ejector.

This was an action of ejectment. A portion of the premises sought to be recovered was a house which was let out to a number of lodgers. The person endeavouring to serve the declaration, made several efforts to serve the lodgers, but without success. He then effected a service on the person who kept the house so divided into lodgings.

Petersdorff moved now for judgment against the casual ejector, founding his application on an affidavit disclosing the above facts.

Patteson, J., thought that under the circumstances, enough had been done to entitle him to a rule *nisi* for judgment.

Rule *nisi* accordingly.

Another part of the premises consisted of a house occupied by a tenant and his family. Service was effected on a daughter of the tenant, accompanied by the usual reading and explanation. Subsequent to the commencement of the term, the deponent who had served the daughter went again to the premises, and on communicating with her, she stated that she had given the declaration to her father.

Petersdorff, on this state of facts, moved for judgment against the casual ejector, and submitted that this was sufficient to entitle him to a rule *nisi* for judgment against the casual ejector.

Patteson, J., was of opinion that the service disclosed was sufficient for judgment against the casual ejector.

Rule *nisi* granted.—*Doe d. Threader v. Roe*, M. T. 1841. Q. B. P. C.

**EJECTMENT.—TITLE OF DECLARATION.—
DATE OF NOTICE.**

Where the title of the declaration is wrong, and there is no date to the notice, so as to inform the tenant when he is to appear, judgment against the casual ejector will not be allowed to be signed.

Sir John Bayley moved for judgment against the casual ejector. The declaration was entitled "Trinity Term, 5th Victoria," that term not having yet arrived. Besides, the notice at the foot of the declaration had no date to it. The question was, whether this was sufficient. The service had been regular in every other respect.

Patteson, J.—That won't do, as there is no date to the notice. The cases where it has been held immaterial that the title of the declaration was insufficient, have been those in which there has been a date to the notice, so as to inform the tenant when he was to appear. That is not the case here.

Rule refused.—*Doe d. River v. Roe*, M. T. 1841. Q. B. P. C.

Common Pleas.

PARTICULARS OF SET-OFF.—VARIANCE.

The particulars of set-off to an action for goods sold were in the following terms: "August, 1840. Cash, being the amount of the plaintiff's dishonoured acceptance, and charges, 21l. 6s." At the trial, the plea of set-off was supported by the production of an unpaid bill of exchange for 19l., coming due in the month of August, 1840, and indorsed by the plaintiff; a verdict having been found for the defendant, held, that the variance was not such as that the plaintiff could have been misled, and that it afforded no ground for a motion for new trial.

This was an action of assumpsit. The defendant pleaded non assumpsit; payment, and a set off. The defendant's particulars of set off were in the following terms:—"August, 1840. Cash, being the amount of the plaintiff's dishonoured acceptance and charges, 21l. 6s." At the trial before the under-sheriff of Surrey, the plaintiff established a debt of 17l. 4s. The defendant put in a bill of exchange indorsed by the plaintiff to the defendant. This bill was for 19l.; was dated 23d June, 1840, and was payable two months after date. It was objected on the part of the plaintiff that the bill did not answer the description in the particulars of the defendant's set-off, which was stated to be an "acceptance," and not an indorsement. The jury, however returned a verdict for the defendant.

Shee, Serjt., now moved on behalf of the plaintiff for a rule to shew cause why there should not be a new trial.

Per Curiam.—The variance complained of in these cases should be calculated to mislead the parties. The amount of the bill was 19l.,

which, with "charges," might very easily be increased to 21*l.* 6*s.* We do not think that the plaintiff could have been misled by the misdescription of the matter of set-off—it being, not his dishonoured acceptance, but his indorsement.

Rule refused.—*Parsons v. Wilson*, M. T. November 4th, 1841. C. P.

FORM OF DECLARATION IN COUNTY COURT.—
JURISDICTION OF COURT.—PARTICULARS
OF DEMAND.—JUDGMENT.

*The plaintiff declared in a county court for 1*l.* 19*s.* 6*d.*, and by the particulars a balance of 1*l.* 18*s.* 8*d.* was claimed, the original debt stated being 3*l.* 11*s.* 6*d.*, and credit being given for 1*l.* 12*s.* 10*d.* Held, that although the declaration, if the parties could be called in aid to explain its meaning, might be taken to claim less than 40*s.*, yet that the particulars could not be so taken as affording an explanation as to the amount of the demand, and that the declaration was bad in the County Court as demanding more than 40*s.* Held also, that the plaintiff intending to declare for the balance of a debt originally exceeding 40*s.*, but reduced in amount by payments, should have set out the original debt, and have given credit for the sums paid, reducing it below 40*s.**

To a writ of false judgment, the Sheriff of Somersetshire made a return of the record in suit in the County Court. The declaration stated, that the defendant on &c., within &c., was indebted to the plaintiffs in the sum of 1*l.* 19*s.* 6*d.*, for the price of goods sold and delivered by the plaintiffs to the defendant at his request, and in the sum of 1*l.* 19*s.* 6*d.* for money found to be due from the defendant to the plaintiffs on an account stated, which said several sums, were to be respectively paid on request; whereby, and by reason &c., an action hath accrued to the plaintiffs to demand and have of and from the defendant the said several sums respectively, amounting to the sum of 1*l.* 19*s.* 6*d.*, yet the defendant hath not paid the said sums above demanded, or any part thereof, to the damage of the plaintiffs of 1*l.* 19*s.* 6*d.* &c. The particulars which were set out, claimed a total sum of 3*l.* 11*s.* 6*d.*, but gave credit for the payment of 1*l.* 12*s.* 10*d.*, reducing the sum actually demanded to 1*l.* 18*s.* 8*d.* The plaintiffs gave notice that they should avail themselves of all or any of the counts in the declaration. The defendant pleaded, that the Court ought not to take further cognizance of the action, because in the said debts in the first and second counts mentioned, amounting together to the sum of 3*l.* 19*s.* are and each of them is demanded for and on account of and in respect of the same dealings and transactions, and relating to one continued account, and although the plaintiffs have demanded the sum of 3*l.* 19*s.* in two different counts in the declaration, by dividing

the same into two equal parts, so as to reduce the sum demanded in each count below 40*s.*, yet that the said sum of 3*l.* 19*s.* is sought to be recovered in this action in respect of one debt and demand: Verification. Replication, that the cause of action, &c., hath been correctly set forth. Issue. Concilium. Judgment for the defendant for his costs, a preliminary objection having been disposed of (vide ante, p. 94)

Stephen, Serjt., contended on behalf of the plaintiffs, upon the context of the declaration that it was good, and demanded only one sum of 1*l.* 19*s.*, and that two counts had been adopted only to give the plaintiffs the double mode of stating their demand.

Tindal, C. J.—The correct way would have been to have stated the original debt, and then to have given credit for a portion of it, so as to have reduced the amount actually claimed below 40*s.* Anything equivocal in the declaration was waived by the defendant pleading over. *Middleton v. Hobson*, 6 B. & C. 295; and the Court would take the particulars of demand into consideration in construing the declaration.

Telford, Serjt., for the defendant, cited *Lord v. Houston*, 11 East, 62.

Tindal, C. J.—The rule is well established by *Moravia v. Sloper*, Willes 30; *Tilley v. Foxall*, ib. 648; that where it appears on the face of the proceedings of an inferior Court, that they have jurisdiction, every intendment shall be made in favour of those proceedings, in order to support them; but that if it appears affirmatively that they have not jurisdiction, or if it is left in doubt whether they have or not, then the rule will not hold. The main question is here, whether upon this declaration more than 40*s.* is demanded. I agree, that if we could bring the particulars in aid of the declaration, the action would appear to be brought for less than 40*s.*, but the bill of particulars is well distinguished in the Superior Courts, from matters of record. *Booth v. Howard*, 5 Dowl. P. C. 439; and we cannot give it any further force in the Court below than it would be entitled to in the Court above. Upon the terms of the declaration, I am of opinion that the plaintiffs have not shewn that their cause of action is within the jurisdiction of the Court, because they have claimed more than 40*s.* If we are of opinion that the declaration is bad, we need not go into any question upon the subsequent part of the record, whatever doubts may arise upon that; but if in justice and right, the plaintiff ought not to recover, it is our duty to say how the judgment shall be given. The judgment given by the Court below is a nullity, because it is a mere judgment for costs; but I think that the right judgment should be, that the plaintiffs be barred from further proceedings in the County Court on the ground that that Court has no further cognizance of the demand; the consequence of which is, that this being virtually a judgment in abatement, the plaintiffs may go to the Superior Court, and that as the judgment is on a plea in abatement, the de-

pendant shall not have his costs, the matter of fact not having been tried.

Coltman J. and Maule J., concurred.

Judgment accordingly.—*Dempster and another v. Parnell*, M. T. 1841. C. P.

CHANCERY SITTINGS, In and after Hilary Term, 1842.

Before the Master of the Rolls.

AT WESTMINSTER.

Tuesday .. Jan. 11	Motions.
Wednesday ... 12	Petitions in Gen. Paper.
Thursday 13	
Friday 14	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday 15	
Monday 17	
Tuesday 18	
Wednesday 19	
Thursday 20	Motions.
Friday 21	
Saturday 22	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Monday 24	
Tuesday 25	
Wednesday 26	
Thursday 27	Motions.
Friday 28	} Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday 29	
Monday 31	Petitions in Gen. Paper.
Tuesday .. Feb. 1	Motions.

AT THE ROLLS.

Wednesday 2 { Short Causes after swearing
in the Solicitors.

Short Causes, Consent Causes, and Consent
Petitions, every Tuesday at the Sitting of
the Court.

THE EDITOR'S LETTER BOX.

"A Subscriber" refers to the case of a gentleman who has served his time, (a period of seven years), with a notary public, and at the expiration of two years from the date of such articles, indentures, binding him to the same party, as an attorney and solicitor, were signed and duly enrolled: thus, the two indentures are contemporaneous, and concurrently expiring; and, he inquires, whether such a service entitles the clerk to any, and, if any, what, advantages over a pupil seeking admission as a notary public, who has been articled to a solicitor and attorney only, without the notarial qualification, for the usual period of five years. The 3 & 4 W. 4, c. 70, s. 1, enacts, that so much of the 41 G. 3, c. 79, as requires that persons to be admitted notaries shall have served a clerkship or apprenticeship for seven years, shall so far as the same affects persons being *attorneys, solicitors, or proctors*, admitted, as in the act mentioned, be limited to London, Westminster, and South-

wark, or ten miles from the Royal Exchange-London.

In answer to an inquiry at p. 112, "A Constant Reader" states, that where a party giving a warrant of attorney, is himself an attorney, no other attorney need be present at its execution. (See *Chipp v. Harris*, 18 Law Journal, Exchequer, p. 64). Of course the same law applies to a cognovit. An attorney of the Court of Common Pleas at Lancaster, is competent to attest a cognovit; for Mr. Wareing, in his Practice of that Court, states, that it is recognised as one of the Superior Courts of the kingdom; referring to Saund. 74. The act of 1 & 2 Vic. c. 110, in so many sections speaks of the Superior Courts of Westminster as to warrant the conclusion, that when it uses the term "one of the Superior Courts," without the addition "at Westminster," (as it does in sec. 9, relating to warrants of attorney and cognovits), we may suppose that the Court of Common Pleas at Lancaster, and Court of Pleas at Durham, are included. This construction is supported by the wording of the 22d section; for there the term "Superior Courts" is qualified by adding "at Westminster;" and immediately after the Courts of Lancaster and Durham are mentioned; whilst the following section applies to "any inferior Court of Record."

The additional names of Perpetual Commissioners, omitted in the Legal Almanac, shall be given in an early number.

"A Member of the Profession" inquires whether, on the advance of certain large sums of money, at different times, for securing which, a policy is assigned, it is necessary to have an *ad valorem* stamp; or whether a common deed stamp would suffice; the policy not being an immediately available security.

A Correspondent proposes that a Law Library for the diffusion of legal knowledge be established on a moderate scale: and he observes, that in the Institution in Chancery Lane it is not permitted to remove books from the library to the subscriber's abode; that consequently on taking up a particular work the first night, and perusing a certain number of pages, he finds it the next evening engaged by another party. We have always understood that the use of a library, such as that above-mentioned, consisted in referring to the Reports and Text Books, or consulting scarce and valuable works: and that the student should possess his own little collection of elementary treatises.

We are not aware of any such library as that inquired after by V. F. S.

A clerk whose articles will not expire till the 16th August, cannot be examined in Trinity Term without special leave of the Court.

The Legal Observer.

SATURDAY, JANUARY 8, 1842.

— "Quod magis ad nos
Pertinet, et nosse malum est, agimus.

HORAT.

A MEMOIR OF THE LATE MR. BARON BAYLEY.

A MAN who hoards his guineas, has the melancholy satisfaction of thinking that at his death his labours will not entirely perish; the man of science bequeaths to the world the result of his discoveries; but the lawyer has only two ways of benefiting his profession after he has ceased to live in it. If he is patriotic enough to write a book, or if elevated to the bench, he delivers reported judgments, to this extent he benefits posterity. But this is a very small part of the great wealth that he possesses. Few, very few men indeed, in the century, make themselves thorough masters of the vast and peculiar stores of English law. It is sometimes the fashion to sneer at what are called case-lawyers; but this is only because very few men indeed have the qualifications necessary to become such. The great case-lawyer must possess at least four qualities—untiring industry, vast memory, a quick perception, and a discriminating judgment—without all of these he is not entitled to the character. He may have industry, and may acquire much; he may have memory, and may remember much; he may have a quick perception, and he may readily apprehend, but after all know not how to use what he has got; or lastly, he may have a sound and discriminating judgment, but wanting industry to acquire the materials for it, or memory to retain them, or a quick apprehension of them, he will be found wanting in the qualifications of a great practical lawyer, who having mastered the whole contents of his library, must be able to wield them at will, and bring them to bear at any given moment on any particular case. Such men,

such case-lawyers, are rare. It is not easy to find the qualifications united in any man, and of course still rarer to find them united in the legal profession. Many men there are who make a considerable show and glitter, with half the stock; dashing nisi prius advocates, with ready memories and quick apprehensions, who dazzle a jury, and often get a verdict; but put them in a heavy case, get them to work up their way through a mass of proofs, slowly and cautiously; oppress them with a load of pleading, with cases intertwined in every line; or give them a special verdict or a bank argument to get through, and they lose all their confidence, and are glad enough to be supported up by the heavy artillery of a thorough case-lawyer. When such a man dies, therefore, it is a serious loss. Whether our present system of law, spreading itself, as it does, over a thousand volumes, be right or wrong, we need not here discuss; but so long as it continues, the man who has a clue to the labyrinth is invaluable; one, who, trusting neither to digest or treatise, can put boldly out to the wide ocean of reports, and steer his client safely to harbour, who knows all the depths and shallows, and can call from their inmost recesses all the geni of the lamp to his assistance. In many cases all this knowledge perishes wholly with the owner; but in all cases the greater part. He may leave a shred in the shape of a book, but this is comparatively seldom; he may have decided some hundreds of cases, but on his death the bank is broken, the treasury is dispersed for ever, the instrument which produced such eloquent music will sound no more. The class of men of whom we are speaking are the more to be regretted as they are certainly diminishing in number in the present age; and we cannot but feel

that perhaps the most eminent of the present day was the venerable man, the particulars of whose life we are now to commemorate.

We have already in the course of this work, had occasion to advert to the eminent judicial qualities of Sir John Bayley; but we are sure we shall be readily excused, if, on the present occasion, we collect every particular relating to him.

He was born on the 3d of August, 1763, and was descended from an ancient and respectable family in Huntingdonshire. His grandfather, Isaac Bayley, of Chesterton, in that county, married a lady of the family of Bigland, in the county of Lancaster. The second son by this marriage was John Bayley, of Elton in Huntingdonshire, who married a lady of the name of Kennett, a relative of Dr. Kennett, formerly bishop of the diocese; and the subject of this memoir was issue of this marriage. He was educated at Eton, and was, we have understood, at one time intended for the church. Circumstances led him to change this view, and he prepared himself to pursue the legal profession. He accordingly entered himself at Gray's Inn (never having, as we believe, enjoyed the benefit of a university education) in the year 1780, and applied himself diligently to the study of his profession. He soon made the progress which might naturally have been expected from his abilities, but he did not feel sufficient confidence to go at once to the bar. He preferred commencing as a pleader, an avenue of the profession, which, however humble and uninviting, has led so often to its highest honours.

"The path of *leading* leads but to the Bench,"—at any rate, as trod by young Bayley. It was here, that for seven mute inglorious years he acquired that familiarity with the details of pleading and practice, which he found afterwards so serviceable in the higher walks of the profession; it was here, that he laid in that vast store of case-law which he was able, afterwards, so readily to apply; neither is it to be forgotten that here he acquired the confidence of a numerous body of clients who were willing to support him in the more arduous step of going to the Bar. This important era in his life he commenced in Trinity Term, 1792, and no tedious interval intervened between his being called to the Bar, and his obtaining considerable practice as a useful junior. The first cases which he appears to have argued, were *Harrison v. Barnby*, 5 T. R. 246; and *Kearslake v. Morgan*, *Id.* 513, and his name will be found afterwards very

frequently in those best evidences of business in legal arguments—the Term Reports. He attached himself to the Home Circuit, and was for some time Recorder of Maidstone. His increasing business soon justified his taking the coif, and in Trinity Term, 1799, seven years after he was called to the Bar, he was created serjeant.* As a *nisi prius* leader, he was not distinguished by any great eloquence; neither had he such a large business; but his addresses were clear and perspicuous, and his legal arguments not to be surpassed. He was very soon been pointed out as a man fit in every respect for the Bench; and in Easter Term 1808, the opportunity offered, of placing him there. Sir Giles Rooke, one of the Judges of the Court of Common Pleas, died, and was succeeded by Mr. Justice Lawrence, one of the Judges of the King's Bench. This left a vacancy in that Court, and Lord Eldon, then Chancellor, advised the appointment of Mr. Serjeant Bayley, which was highly satisfactory to the profession. It was here that his eminent qualities became so conspicuous; on all questions of law, on all points of pleading and practice, he could, without effort, produce all previous cases; his "little books," the fruit, doubtless, of the labours of many years, formed an inexhaustible storehouse of legal learning; and we may safely say, that no law can be considered better settled than that resting on his judgments. But he not only showed deep learning and research; his view of a case at *nisi prius* was clear, and his examination of evidence was patient and indefatigable. He supported his own view of a case with firmness, but was still open to suggestions from counsel as to the mode in which a question should be left to the jury; and few of his *nisi prius* decisions have ever been reversed. He preserved the dignity of the Bench in a manner which always prevented or repressed any infringement upon it, but in a manner which never decreased the affectionate regards of the Bar. Indeed, there was a peculiar kindness and benignity in the whole of his judicial conduct.

After Sir John Bayley had passed fifteen years in the King's Bench, in the year 1823, he felt desirous of being in some degree relieved from the fatigue of that laborious Court, by the comparative retirement of the

* While at the Bar, his opinions had much weight, and are entitled to great attention. For an account of his manner of giving opinions, see Chitty's General Practice, vol. 2, p. 43, cited 7 L. O. 306.

Court of Exchequer. He was, however, entreated to remain by the Bar, and the memorials, having this object for their prayer, were signed by eleven king's counsel, and one hundred and one members of the Outer Bar. Thus enforced, he sacrificed his private convenience, and continued as a Judge of the King's Bench until the 11th of November 1830, when he took his seat as a Baron of the Exchequer; and in the year 1834, he retired altogether from the Bench, after twenty-five years' judicial service, and was shortly afterwards created a baronet, and a member of the Privy Council.

Mr. Baron Bayley found time, while at the Bar, to give to the world, a valuable treatise on the Law of Bills of Exchange, which is well-known to all our readers. The first edition was published in 1789, and it has gone through several editions, the last of which appeared in 1830, edited by his son Mr. Francis Bayley, and the work continues to be considered a most valuable text-book on the important branch of the law to which it relates. The learned Judge also edited T. Raymond's Reports in 3 vols. 1790.

We have now traced the principal events of the public life of this eminent lawyer. It only remains to add that he was a gentleman in his manners, and that his heart was as sound as his law. He was particularly kind and gracious in his manner; his face beamed with gentleness, and his distinguished qualities were not less conspicuous in his private than in his public life. He has lived much in retirement of late years, and died at his country house, Vine House, near Sevenoaks, on the 10th of October last, aged 78.

He was married on the 20th of May, 1790, to the youngest daughter of John Markett, Esq. of Meopham Court Lodge, Kent, by whom he had issue three sons and three daughters. The eldest, who inherits the title of his father, and is the present Sir John Bayley, and Mr. Francis Bayley, his third son, are, we are proud to say, both at the Bar, and well-known to the profession.

THE PROPERTY LAWYER.

HERIOT.

THE property in a heriot does not vest in the lord without a specific selection. *Woodlands v. Mansell*, Plowd. 96; *Odiham v. Smith*, Cro. Eliz. 589. In the latter case, it was held that where the lord shall have the beast for a heriot, it is his election what he will take for the best;

and what he conceives to be the best, he may well take, although it be not so; and it has been recently held, that where a customary heriot of the best beast is due on the death of a tenant to the lord of the manor, no property in any specified beast vests in the lord before selection by him of the best; and that even a selection of seven beasts as heriots, when the lord is entitled to five only, will not be sufficient to vest in the lord the property in any five of them. If he is entitled to the best beast as a heriot, he must form a judgment, and exercise an option as to which is the best. *Alington v. Lipscombe*, 1 G. & D. 230.

FIXTURES.

Blackstone says, "Things fixed to the freehold may not be distrained; as caldrons, windows, doors, and chimney-pieces, for they savour of the realty." Blackstone's Comm. vol. 3, p. 9. The point arose in *Duck v. Braddyl*, 1 McClell. 217; but it was unnecessary to decide it. It has very recently arisen in the case of *Darby v. Harris*, 1 G. & D. 234, in which it was held that "fixtures cannot be distrained, because it is impossible to restore them in the same plight they were in when they were seized."

VENDOR AND PURCHASER.

"Where a person," says Sir E. Sugden, "takes upon himself to contract for the sale of an estate, and is not absolute owner of it, nor has it in his power by the ordinary course of law or equity to make himself so, though the owner offer to make the seller a title, yet equity will not force the buyer to take it; for every seller ought to be a *bona fide* contractor; and it would lead to infinite mischief if one man were permitted to speculate upon the sale of another's estate. Besides the remedy is not mutual, which perhaps is of itself a sufficient objection in a case of this nature." Vend. & P. vol. 1, 207, 9th ed., citing *Tendring v. Loudon*, 2 Eq. Ab. 680, pl. 9; and Sir Edward adds the following *quære*:—"Whether there is any case in which a man, knowing himself not to have any title, has been allowed to enforce the contract by procuring a title before the report." In a case where A. agreed to sell an estate, and it was afterwards discovered that a small portion of it was the property of another person, Sir L. Shadwell, V. C., would not discharge the purchaser from his contract without giving A. an opportunity of acquiring a title to that portion. "It is said, (observed his honour,) that this Court will not sanction a contract made by a person to sell to another, that, which at the time he knows he has not. I admit, if the case is that A., with reference to an estate, which he knows to belong to B., contracts to sell it to C.; that it is a very wholesome rule that this Court ought not to aid such a contract. But general rules do certainly admit of variation, and in my opinion it would be vastly too

harsh an interference with the common mode of the management of the business of mankind, if such a rule were taken to be applicable to a case when a party apparently in the ownership, and *prima facie* appearing to have a title, sells land; and it afterwards turns out that a very small portion of it is not his, (although he was in possession), but is the property of another person. It would be a harsh application of the first principles of this Court, were I to say, that in such a case, the contract was so radically bad, that even if the vendor could honestly procure his title to be made good by purchasing the property for himself from the rightful owner, in order that he might hand it over to the purchaser, he should not be at liberty to do so." *Chamberlain v. Lee*, 10 Sim. 444.

LETTERS

FROM MR. AMBROSE HARCOURT, STUDENT AT LAW, TO MR. THOMAS PRINGLE, OF TRINITY HALL, CAMBRIDGE.

LETTER I.

Dear Pringle,

I PROPOSE now, according to my promise, to report progress to you, as to how I get on. I trust we shall thus be able to assist each other, as we have already done. I intend to send you some hints as to books and course of reading, as I pick them up; and be assured I will tell you what I think of all the judges' when I have any right to form an opinion about them. I should first mention that I have got a snug set of chambers here, (Elm Court) up three pair of stairs, for which I pay 35*l.* a-year, and am gradually getting some books. I have got all the Common Pleas Reports complete, and am coming on with the King's Bench.

And first, as a friend, let me tell you, that London puts one quite out of conceit with Cambridge. The fewer airs we give ourselves for any distinction taken there, the better we shall thrive in the Temple. Many people, I find, hardly know what a wrangler means, and the master of Trinity loses all his terror and authority within sound of Bow bell. So much in your ear, although I dare say you will hardly believe me.

You know I have ran up and kept my terms for two years. Since I came to town, I have been looking out busily for a pleader. Brooks (you remember Brooks of St. John's?) wanted me very much to go to Mr. Supples, who has got ten or eleven pupils; but on the whole I have preferred Mr. Barnaby, who takes only three. He is really a very nice fellow; and I cannot only ask him any question that I want, but he seems to take a plea-

sure in talking to his pupils and giving them advice. I had no idea, indeed, that a pleader could be so well informed and agreeable as Barnaby is; and I am just fresh from a long lecture from him, of which I will give you the benefit. I should tell you it was after work was done in the evening, (for I go to chambers in the evening, for which I get great praise) and I had loitered until tea came in, (for Mr. B. lives in chambers,) and I chanced to say I was half through a new novel, and would go home and finish it.

"Beware what you do," said he, "Harcourt. 'The lady Common Law loves to lie alone.' This is a homely rule, but there is none more true among the truest of trueisms. Let a lawyer beware of literature; if he loves it, let him conceal his passion from every one. His shirt may be what colour he pleases; his nails may rival a draft-board; his habits in all other respects be regular or irregular; but do not let the most sneaking kindness for poetry or romance ever be told of him. This is a harsh rule, and I lay it down for your guidance with some pain; but, like most other rules based on extensive experience, it will be found to be a sound one. What is wanted in a lawyer, is to be able to give the whole of his faculties at the precise required moment to the particular cause in which he is engaged. To be able to give this assistance to his client, his whole soul should be absorbed. He should have nothing whatever to distract him; he should live, move, and have his being in the matter in hand; he should have no other pursuit, no city of refuge; his retreat should be cut off; his ships should be burned; his whole existence should be merged in the success of the individual cause in which he is engaged. This state of isolation must be gained, to produce the lawyer—the attorney, in a great extent, but certainly the barrister. The want of it is the cause of so many failures in the law by so many clever men, and the success obtained by so many common-place men. Mix in professional circles, and how vividly will this strike you? Take one half of the successful lawyers of the day, and it must be admitted that, out of Court, they are very stupid fellows indeed, not up to the mark on the average information of the day; yet, put them in their own places, see them conducting a cause, and you will be surprised how much they can produce that is wanted; how all their energies are awakened; how they are able to bring into play every faculty they possess, and how superior they are in action to much cleverer men, who have not entered into the pursuit with the same intensity and single minded-

ness. What, therefore, is the most necessary thing for success in the law?—simply to enter into it heart and soul; and, all others renouncing, to cleave solely to it.

“Now one of the most dangerous rivals to the class of men who study the law, is, unquestionably, literature; and I have no hesitation in saying, Hartcourt, that such is its fascination that I must caution the student from having any thing whatever to do with it. He had far better not listen at all to the syren, however fast he may fancy he has bound himself to Coke upon Littleton. I recommend him to avoid all poetry, all novels altogether; but if he will read, let him not, as he values his hope of success, let him not write a line. Let him not trust himself to put pen to paper. But, as there are degrees in folly, he may, I admit, do worse than even this; he may print what he has written, and if once he gets this length, all further idea of commanding great success is gone for ever. Let him be ever so good a lawyer, it will never be believed. His reputation will gradually ooze away. Very middling lawyers have written very middling books. Very bad lawyers have written very good books; but no lawyer of any thing like first-rate eminence and practice ever published a work of imagination. Whether they could have done so or not, I don’t know; but they never did, (I speak not, of course, of law books). On the contrary, if they have in secret committed such an offence, they have carefully concealed it. When Blackstone began the study of the law, he bade farewell to the muse, and never afterwards wrote a line. When Pope said of Lord Mansfield

“How sweet an Ovid was in Murray lost,”

Murray took it as a very high compliment. The muses might weep, but the attorneys flocked to King’s Bench Walk. A practising lawyer might very properly maintain an action against any man who accused him of writing a novel, and I am sure that twelve out of the fifteen Judges would so hold.”

Thus he discoursed, and as we have both dabbled in literature, I sent it to you for your instruction. To confess the truth, it made such an impression on me that I went home and burnt five chapters of a capital novel that I wrote in the vacation, and am determined henceforth to stick to Tidd. I will write again shortly.

Your’s truly,

AMBROSE HARCOURT.

Elm Court, Temple, Jan. 4th, 1842.

REFORM IN THE CHANCERY OFFICES.

MASTERS’ OFFICES.

The following plan for improving the practice in the Masters’ offices is extracted from the pamphlet we noticed last week.

1st.—That on the warrant to consider the decree, the Master shall appoint by what parties the different proceedings directed by the decree shall be prosecuted and brought in; that he shall fix what he considers in his judgment and with reference to the circumstances of the case, a reasonable time for the facts, evidence, accounts, &c. to be brought into his office; and that he shall then decide, and his decision shall be final, as to whether affidavits shall be received or not.

2nd.—That no warrant to proceed shall issue, until the facts and evidence in support of the whole of the inquiries directed by the decree, shall be left in the Master’s office; unless the Master under the special circumstances of any case shall direct any partial proceedings under any decree or order.

3rd.—That at the expiration of such time which shall have been allowed by the Master, in case the party who is to bring in the different facts, evidence, or accounts, shall not have complied with the Master’s direction as aforesaid, the Master shall cause the solicitor of the party making default to be summoned before him, and show to the Master satisfactorily, by affidavit or otherwise, good and sufficient cause why he is not prepared to bring in the facts, evidence, or accounts aforesaid, and in case the Master shall not consider that sufficient cause is shown, he shall be at liberty to give the prosecution of such part of the decree or order to any of the other parties in the cause or matter, who may be capable of prosecuting the same; but if the Master shall be satisfied that sufficient cause is shown, he shall then allow such further time as in his discretion he shall think fit.

4th.—That upon the expiration of the time aforesaid, or of such further time, the facts, evidence, and accounts aforesaid, having been prepared and left in the Master’s office, a warrant shall be taken out by any or either of the parties in the cause or matter, for the purpose of calling the different parties before the Master, when a time shall be fixed by the Master to proceed upon the several facts, evidence, or accounts aforesaid, and the same shall be proceeded with *de die in diem*, until the same be disposed of, unless the Master shall otherwise order.

5th.—That if the evidence in support of such facts, accounts, or other proceedings, when brought in, shall be found insufficient, the Master shall direct what further evidence he will require, and fix a time when such further evidence shall be perfected and brought in, and if the same is not then brought in, the Master shall cause the solicitor to be summoned before him as aforesaid, but if the same

shall be then brought in, a similar warrant, as above, shall be issued to bring the parties together, and a time shall be fixed and proceedings taken thereon *de die in diem*, unless otherwise ordered by the Master.

6th.—That the charges allowed to solicitors shall be in proportion to the number of warrants that the papers in the Master's office will carry, at the rate of one warrant for every twenty folios.

7th.—That on the allowance of interrogatories by the Master, the engrossment of the interrogatories, signed by the Master, shall be delivered to the solicitor, who shall issue a commission for the examination of witnesses, without any order or report for that purpose being necessary. The examination to be brought up by messenger, and left in the Master's office.

8th.—In case the party to whom the prosecution of a decree is entrusted make default, and no sufficient cause be shown, and it shall appear that such decree cannot be effectually prosecuted by any of the other parties in the cause, this shall not prevent the Master from making his report, but the circumstances shall be specially stated to the Court.

9th.—No objection to be taken to the Master's report, but at any time before the report is confirmed absolutely, any party dissatisfied with the report may file exceptions thereto.

10th.—That exceptions to reports shall not be set down in the regular list of causes, but shall be set down to be heard in the same manner as pleas and demurrers are now set down and heard.

11th.—That in each Master's office there shall be an additional chief clerk, who is to perform the same duties as those now performed by the first or chief clerk, and to receive a similar salary, and that no person shall be elected to such office of chief clerk who has not been admitted a solicitor for five years.

To these suggestions we may add the following letter, received from a correspondent:—

ACCIDENT has just thrown in my way a pamphlet, entitled "Considerations on Reform in Chancery, by an Equity Draftsman," and from which I thought it possible that some useful reform might have been suggested; but, upon perusal, I find the chief, if not the only reform that is suggested, is that the references before the Master should be attended by a barrister, or, in other words, that the barrister should become the managing clerk of the attorney—every proper cause of complaint will be removed by this simple alteration. Let a barrister attend the Master, and every thing will go right. The opening of the Master's offices to the public will be *injudicious*; and the Master's time will be saved if that is done, for the barristers will arrange the points to be discussed, so as to get through cases in one or two meetings, where ten are now consumed!!!

It is surprising that any person pretending

to have a knowledge of the profession should write thus. Is it not notorious that where counsel are instructed, more time is lost than when the business is conducted by the solicitor? Is it not well known that the judges for this reason have declined to permit counsel or pleaders to attend them at chambers during term?

The "Equity Draftsman" thinks the barrister should not collect and prepare the evidence for the Master, but as he could no where get his points to arrange, except from the evidence got up and prepared by the solicitor, does it not appear reasonable to the gentleman that the solicitor who is capable of getting up the case is, *à fortiori*, capable of stating it to the Master; or that the Master, who is a barrister, by reading it, is capable of coming to a proper conclusion. If so, the expense of fees and briefs to counsel are saved by the present system. The "Equity Draftsman" reminds me of the fable of the Three Mechanics (a stone mason, a carpenter, and a currier), brought together to determine upon the best materials to build a bridge. The currier thought there was nothing like leather. So the "Equity Draftsman" thinks there is nothing like employing a barrister on all occasions to work a complete reform. The uninitiated will be misled by this pamphlet, but not the members of the profession. It is very remarkable that the learned gentleman, when he explains the business requiring the talent of counsel, refers to a reference for impertinence, and to a reference on the sufficiency of a defendant's answer. The learned gentleman complains that time is lost in laying papers before counsel to consider the sufficiency of the answer; and no doubt this is frequently the case; and he states that an opinion is generally procured within a week. This can be done if the barrister has little or no experience; but the reverse is the case with gentlemen of any practice. A solicitor frequently sends daily to the barrister for a month at a time, in vain, for his papers: in fact, I know at this moment a gentleman at the bar who has had instructions for an answer to a short supplemental bill before him, for nearly three months; and it has occurred more than once to my knowledge that suitors have been attached, and have been called upon to pay heavy costs, solely from the omission of counsel to attend to papers. If a solicitor were to employ a whole day considering the answer, and in comparing the interrogatories of the bill with the defendant's answer, he would not be allowed a farthing for his trouble and time, but if he give three guineas to a barrister to do the same thing, he will be allowed such fee, and one *6s. 8d.* as between solicitor and client, but nothing as between party and party—so much for the wisdom or rules of taxation of the Court of Chancery.

I should like to ask the author, whether he does not think it would be proper to repeal the compulsory order of Court, that all pleadings must be signed by counsel. The solicitor could then prepare the common bills and an-

swers, and also the exceptions, which at present it is useless for him to do, because the barrister who has to sign them, must go through the papers to see whether they are properly prepared; and, of course, two persons could seldom or ever prepare the same document in the same phraseology. The "Equity Draftsman" states that a solicitor is allowed to charge largely for what he does not do. I deny this, and take the illustration he gives in regard to the costs of preparing the pleadings. There are many attendances to get up, and reduce the facts into a statement, all of which fall into the notable 13s. 4d. as instructions for a bill; besides which the solicitor has to furnish the counsel with copies of deeds and documents, and to examine the statements when set forth in the bill. Although these copies are made, and attendances given by the solicitor, he does not get paid any thing for them, even as between solicitor and client; and it is no uncommon case that the charges applicable for making such copies, exceeds the fee he takes for the draft prepared by the counsel. It is from these written statements and documents, that the counsel gets his facts, and which, with some general forms, (copied by his clerk, which are sometimes introduced) make up the bill. I do not understand the "Equity Draftsman's" arithmetic. I think he will find, upon further calculation, that upon the whole he receives more than 1s. per folio for the work he performs; and particularly when he considers that the documents copied into the bill, and at least half of the bill (called the interrogating part) are drawn by his clerk, who is paid for his labours by the fees he receives from the attorneys. The Bar deserves to be supported, but surely its dignity is affronted, when its members descend to calculate the prices paid for their honorary services.

It is a pity that the author can find no better argument to support the present establishment of the Six Clerks' Office, than their attendance to instruct the ignorant solicitors the practice of the Court; because if the Examiners do their duty, this prop of the Six Clerks' Office will be taken from them, and thus must fall.

X. Y. Z.

NEW BILLS IN PARLIAMENT.

COUNTRY BANKRUPTCIES AND INSOLVENTS.

At the close of the last session, the following bill was brought into the House of Lords, by which it appears, that in case the bill for extending the jurisdiction of County Courts should be passed, it is then proposed to transfer certain matters in Bankruptcy, Insolvency, and Lunacy to those Courts.

It may be important, therefore, that our

readers should be in possession of the proposed enactments. They are as follows:—

1. That the Judges of the several County Courts shall act as commissioners of bankrupt in their several counties and districts, accordingly as such districts shall be from time to time appointed by her Majesty, in all proceedings authorized by any fiat prosecuted in the Court of Bankruptcy, and directed to one or more of the said Judges.

2. That every Judge of the County Court, in their several counties and districts, shall have, either alone or with any one or more of the other Judges of the County Courts, all the powers given to persons acting as commissioners of bankrupt elsewhere than in London, by 1 & 2 W. 4, c. 56; and 6 G. 4, c. 16. And all the provisions of the said acts, except so much thereof as is repealed or altered by this act, shall apply to every Judge of the County Court acting as such commissioner, as fully as if he were a commissioner returned and appointed under the act 1 & 2 W. 4, c. 56.

3. That it shall be lawful for the Lord Chancellor, whenever he shall think fit, to order that any matters heretofore within the jurisdiction of the Court of Review, constituted by the 1 & 2 W. 4, c. 56, shall be heard and determined by one or more of the Judges of the County Courts; and such Judge or Judges shall have the same authority to hear and determine all such matters so ordered to be heard and determined which now belongs to the Court of Review, and all the provisions of the said act shall apply to the Court holden by such Judge or Judges, as if it were the Court of Review constituted by the last-mentioned act.

4. That the Judges of the said County Courts, shall act as commissioners for the relief of insolvent debtors in their several counties and districts as aforesaid, and shall have all the powers which by the last-recited act are vested in the said commissioners when on their several circuits, and the officers of the County Court shall be attendant upon them in the execution of such powers; and every provision of the last-recited act, except as altered by this act, shall apply to the said Judges severally as if each of them were a commissioner for the relief of insolvent debtors on his circuit acting in execution of the said act.

5. That the said Judges of the County Courts shall execute such commissions in the nature of writs *de lunatico inquirendo* as shall be directed to them respectively in their several counties and districts by the Lord Chancellor, and shall make inquisition thereon, and return the same into the High Court of Chancery.

6. That it shall be lawful for the Lord Chancellor, Master of the Rolls, or Vice Chancellor, to order that any commission issuing out of the Court of Chancery, or under the Great Seal, in any proceeding pending in the said Court before them respectively, may be directed to one of the said County Courts, or to

one or more of the Judges thereof; and every Court or Judge to which or to whom any such commission shall come shall have full authority to execute the same according to the tenor thereof.

POINTS OF LAW BY QUESTION AND ANSWER.

WHAT COVENANTS RUN WITH THE LAND.

1. Where the provisional assignee of an insolvent assigned a leasehold estate to a person, who assented thereto and acted as tenant, is the executor of such person liable to the lessor for breaches of covenant subsequent to the testator's death?
2. Where an assignee takes from a lessee freehold premises by indenture, indorsed on the lease "subject to the rent reserved in the lease," is he liable in covenant to the lessee for rent, which the lessee has been called on by the lessor to pay, after the assignee has assigned over?
3. Would a covenant in an indenture of lease, to indemnify the overseers of a parish from all costs and charges, by reason of the lessee's taking an apprentice or servant, who should thereby gain a settlement therein, be a valid one? and if so, would this covenant run with the land?
4. A lessee takes a public house, and covenants with the lessor, who is a brewer, to take his beer of him. On the lessor selling his business, and the assignees removing to a distance, could the latter enforce the covenant?
5. Where a lessee assigned his interest in premises to A., subject to the payment of the rent and performance of the covenants, and damages were recovered by the lessor against the lessee for breaches of covenant by A. during his possession; can the lessee maintain an action; and if so, on what must it be founded?
6. Will a covenant to insure against fire premises situated within the weekly bills of mortality, run with the land?
7. Will a covenant to supply the premises demised with a sufficient quantity of good water, upon a change of the lessee, still continue in force?
8. May the assignee of an assignee of a lessee for a term of years, maintain an action upon a covenant for quiet enjoyment, entered into by the lessee with the first assignee and his assigns?
9. If an assignee convert the lands assigned into pleasure-grounds and erect buildings, can he recover the value of the improvements in an action for quiet enjoyment?
10. Will an action of covenant lie by the assignee of the reversion of part of demised premises against the lessee for not repairing?
11. Would a party taking an assignment of a lease by way of mortgage, become liable on the covenant for payment of rent, though he never occupied or became possessed of the premises?

12. Could covenant be brought by the lessor against the assignee of the lessee on a covenant by the lessee himself, to pay to the lessor the amount of fruit-trees, &c., to be planted by the lessee?
13. Under a covenant by the assignee to pay rent, is he liable upon assigning it over on that covenant before the entry of his assignee?
14. Can a landlord maintain an action of covenant for rent against an under-tenant?
15. A lessee of tithes covenants for himself and assigns, that he will not let any of the farmers in the parish have any of the tithes; does this covenant run with the tithes?

COUNTRY CERTIFICATED CONVEYANCERS.

To the Editor of the Legal Observer.

Sir,

At a time when the profession seem to be beginning to arouse from their lethargy, (taxed as they are in their persons and in their bills), and are striving to obtain an abolition of the oppressive certificate duty, allow me to call your attention, and, through you, that of the profession generally, to a system which has for a very considerable time been carried on in the country, but which does not, I imagine, affect our more fortunate brethren in town.

I allude to the great number of persons who call themselves *conveyancers*, and who, without being members of any of the Inns of Court, openly practise, to the injury of attorneys, at charges which the profession could not by any possibility make. You are aware, Sir, that the chief business of a country attorney is conveyancing, and the legislature has very properly enacted that the same amount should be paid for a certificate by a conveyancer, "being a member of one of the four Inns of Court," as is paid by an attorney. But what if that "conveyancer" is not a member of one of these Inns? Is he to go on preparing conveyances, untaxed and unnolessted, or how is a stop to be put to the injustice? I trust, Sir, that through the medium of your publication, attention will be called to this matter, that the profession may be relieved from one of their numerous hardships. How can we find whether these persons are members of an Inn of Court? A COUNTRY ATTORNEY.

[We understand that through the intervention of the Law Society a list was obtained of the persons practising as certificated conveyancers, both in town and country; and that it turned out that several of these persons did not belong to any Inn of Court; and it was understood that in future the Commissioners of Stamps would not grant certificates without previously ascertaining that the applicant was duly qualified. It may be doubtful, however, whether, in the hurry of business at the time

these certificates are renewed, sufficient care can be taken. The benchers of the Inns of Court who have been informed of this unalpractice, might take means to prevent it. Ed.]

EXAMINATION FOR THE DEGREE OF BACHELOR OF LAWS AT THE LONDON UNIVERSITY.

Tuesday, November 23rd, 1841.

Examiner, Mr. GRAVES.

Morning Examination.

CONVEYANCING.

I. In the following cases of variation between the premises and the *habendum* of a conveyance, state the resulting effect, with reasons :

Premises.	Habendum.
To A.	To A. and his heirs.
To A. for life	To A. and his heirs.
To A. for years	To A. and his heirs.
To A.	To A. from the death of B.
To A. for life	To A. from the death of B.
To A. and his heirs	To A. for life.
To A. and his heirs	To A. and the heirs of his body.
To A. and the heirs of his body	To A. and his heirs.

II.—1. In the absence of express stipulation, how are the expenses attending the deduction of title and conveyance (a) of freehold, (b) of copyhold, property distributed between the vendor and purchaser? 2. In particular, what is the rule as to the expense of assigning attendant terms?

III. State cases in which a purchaser may be compelled to take with compensation an interest different in quantity or quality from that which the vendor professed to sell.

IV. Determine the cases in which a purchaser is bound to see to the application of the purchase money.

V. In what cases is the vendor of a lease *not* bound to produce his lessor's title?

VI.—1. What conveyances are fraudulent, (a) as against subsequent purchasers; (b) as against creditors? 2. Can voluntary conveyances be revoked? 3. Can voluntary agreements to convey be enforced in any, and, if so, in what cases?

VII. In what cases is inadequacy of consideration (a) an excuse for non-performance of an agreement; (b) a ground of relief against a conveyance?

VIII.—1. Relate the progress of the law with respect to the liability of landed property to the debts of a deceased person. 2. Distinguish legal from equitable assets.

IX.—1. Relate the progress of the law in subjecting property to be taken in execution under judgments. 2. Explain the effects, legal and equitable, of judgments on landed property.

X.—1. Can a clergyman directly change his benefice? 2. In what case is a sequestration of a benefice, in consequence of a judgment entered up in pursuance of a warrant of attorney given by a clergyman, valid? 3. State the principal provisions of the restraining statutes with respect to leases of ecclesiastical property.

XI.—1. In what cases is the sale of a next presentation simoniacal? 2. In what cases are bonds of resignation given by an incumbent, valid?

XII.—1. In the register counties, what is the effect of a purchase *without* notice, when the purchaser afterwards registers his purchase *with* notice, of prior unregistered incumbrances? 2. What is the effect, (a) legal; (b) equitable, of a purchase made with notice of prior unregistered incumbrances? 3. Is the fact of the registry of a prior equitable interest sufficient of itself to postpone a subsequent purchaser of the legal estate? 4. Explain "tacking" and "squeezing out."

XIII.—1. Mention the cases in which the law *requires* legal instruments to be registered. 2. In what cases is it unnecessary to enrol the memorial of the grant of an annuity?

XIV. What are the criteria of decision when the question arises whether an informal instrument operates as a lease or as an agreement?

Afternoon Examination.

I.—After a conveyance without covenants, has the purchaser of an estate with a defective title a remedy against the vender in any, and if so, in what cases?

II.—Distinguish covenants which run with the land from covenants which do not run with the land, and give examples of each class.

III.—1. Determine, according to the nature of the vendor's title, the persons against whose acts he can be required to covenant. 2. How do conveyances by way of mortgage differ in this respect from other conveyances? 3. What covenants are ordinarily entered into by trustees?

IV.—What are the covenants usually inserted (a) in conveyances in fee; (b) in assignments of leases for years?

V.—Mention certain clauses relating to trustees and executors which can seldom be prudently dispensed with in wills.

VI.—1. What precautions should be taken by a purchaser of a portion of property held under an entire rent? 2. What effect, as to apportionment, upon an entire rent, is produced by (a) a division of the reversion by act of law; (b) an alienation of part of the lands by the lessor; (c) an eviction of the lessee from part of the lands by the lessor; (d) an eviction of the lessee by title paramount?

VII.—1. Can tenants for life and tenants for years, by the terms of the conveyances under which they hold, be debarred indefinitely from alienation without consent of their landlord? 2. What is the doctrine of *Dumpor's case*, 4 Co. 119, with respect to the effect of a single license to alien? 3. In what cases can aliena-

tion be restricted only by a provision for cesser or by limitation over?

VIII.—1. Explain the requisites of merger. 2. When will merger take place, though the estates are held in different rights?

IX.—State the distinctions between powers appendant or appurtenant, collateral or in gross, and simply collateral, with respect to suspension, extinguishment and merger, and explain the principle of those distinctions.

X.—1. What distinction exists, as to the creation of powers, between conveyances operating by, and conveyances operating without, transmutation of possession? 2. What effect has an appointment under a power on incumbrances subsequent in date to the creation of the power? 3. What effect has an executory devise, divesting an estate in fee, on the dower or curtesy incident to that estate?

XI.—1. Explain the alteration which has been recently made (3 & 4 W. 4, c. 105) in the law of dower. 2. An estate is limited to A. for life; remainder to B. for the life of, and in trust for, A.; remainder to A. in fee: what effect has this limitation on the right to dower of A.'s widow, married (a) before, (b) since, the 1st of January, 1834?

XII.—1. Explain the principal alterations which have been recently made (3 & 4 W. 4, c. 106) in the law of inheritance. 2. A. purchases an estate in fee, and dies intestate, leaving two daughters; one of the daughters dies intestate, leaving an only son; how does her share descend?

XIII.—1. Mention some of the recent alterations (3 & 4 W. 4, c. 27) in the law as to limitation of actions relating to real property. 2. For what length of time is it usual to require a vendor to trace a title (a) to estates in land; (b) to advowsons?

XIV.—Mention the principal alterations which have been recently made (1 Vic. c. 26) in the law relating to devises.

EQUITY.

Wednesday, November 24th, 1841.

Examiner, Mr. GRAVES.

I.—1. In favour of what parties will equity remedy the defective execution of powers? 2. What distinctions are to be taken into consideration, when relief is sought upon the ground of mistake? 3. In what cases is relief afforded on the ground (a) of false representation, (b) of suppressions of fact?

II.—1. Explain the doctrine of election. 2. Does a person who elects to take against a will forfeit the whole benefit intended for him, or so much only as may be sufficient to indemnify the disappointed legatees?

III.—1. Explain the doctrine of conversion. 2. What circumstances are to be considered in determining whether a conversion is intended to be partial, notwithstanding general directions to convert the whole fund?

IV.—1. Upon what presumption is the doctrine of satisfaction founded? 2. In the case of a legacy to a creditor or to a child entitled

by settlement to a portion, what circumstances are to be considered in determining whether the legacy operates by way of satisfaction?

V.—1. Upon what principle is the doctrine of marshalling securities founded? 2. Explain by example, the manner in which equity relieves, (a) before, (b) after, the excessive resort to one of two available funds. 3. Will the Court marshal assets in favour of legatees (a) against an heir, (b) against a devisee?

VI.—Distinguish the cases in which the heir upon whom a mortgaged estate descends can claim to have the estate exonerated by the personality, from the cases in which he is bound to take *cum onere*.

VII.—1. What are specific legacies? 2. In what ways may legacies be adeemed? 3. When successive interests in personal property, wholly or partly of a wasting nature, are limited by will, in what cases must the wasting property be converted into money, and invested in permanent securities? 4. In the case of legacies to infants, without provision as to interest, or with direction that interest shall accumulate until the time of payment, when will a Court of Equity allow maintenance?

VIII.—1. In case of deficiency of assets, have executors any power of giving a preference (a) among creditors of equal degree, (b) among legatees? 2. Explain the effect, (a) legal, (b) equitable, of making a debtor an executor.

IX.—1. What kinds of property of the wife survive to the husband *juri mariti*? and 2. to what kinds of property does the surviving husband become legally entitled by taking out administration to his wife?

X.—1. Explain the meaning of the wife's equity to a settlement, and the manner in which it is made available. 2. Does it exist with respect to (a) separate property of the wife; (b) leases for years; (c) annuities for lives? 3. How is it waived? 4. Is an assignee for valuable consideration of a wife's chose in action entitled to sue in equity for possession without making a settlement? 5. Can a husband, who without suit has obtained possession of a legacy left to his wife, be compelled to make a settlement? 6. Has an assignee for valuable consideration of a wife's chose in action, (a) reversionary, (b) payable immediately, any title as against the wife surviving her husband?

XI.—1. How far is a trustee responsible for the acts of a co-trustee? 2. What is the duty of a trustee with respect to investment of trust funds? 3. Can a trustee purchase from the *cestui que trust*?

I. In what cases will (a) the Crown, (b) the Court of Chancery, execute gifts to charity *cy pres*?

II. On what grounds will equity interfere to deprive a father of the guardianship of his child?

III.—1. Mention some of the kinds of valid agreements with respect to which equity refuses to decree a specific performance. 2. Give examples of facts which may be used for the purpose of resisting a claim to specific per-

formance, while the same facts could not be originally insisted on for the purpose of establishing a claim. 3. In a suit for specific performance, can a defendant set up as a defence a subsequent parol variation, without rendering himself liable to perform the modified agreement which he admits?

IV.—1. Distinguish common from special, injunctions? 2. Upon what grounds will courts of equity restrain proceedings at law? 3. In cases of private nuisance, when will equity interfere before, and when not until after, a trial at law deciding the rights of the parties?

V.—1. How do infants, married women, and lunatics respectively sue, and how defend? 2. Explain the principal rules as to suing and defending in *forma pauperis*.

VI.—1. What are the formal parts into which a bill is usually divided? 2. Determine the different provinces of the stating and the charging part.

VII.—1. Define (a) scandal, (b) impertinence. 2. Explain the time and mode of referring a bill (a) for scandal, (b) for impertinence.

VIII. What are the provisions of the orders of August, 1841, as to objections for want of parties?

IX. State the principal alterations made by those orders in process for contempt in different stages of a suit.

X.—1. Mention two frequent grounds for overruling pleas to part of the bill, which have been removed by those orders. 2. In what cases must a plea be supported by an answer? 3. Define multifariousness.

XI.—1. Mention the cases in which a defendant may refuse discovery. 2. Define the extent of privileged communications. 3. What are the exceptions to the rule that the plaintiff's right of discovery does not extend to the evidence of the defendant's case?

XII. Explain shortly the mode of taking evidence in equity.

XIII. In what cases may a bill be taken *pro confesso*?

XIV. What is the ordinary form of a decree (a) in a creditor's suit for administration of assets; (b) in a foreclosure suit?

XV. In what cases is (a) a bill of revivor, (b) a supplemental bill, necessary?

XVI.—1. How may a rehearing be obtained; how a bill of review? 2. What evidence may be used upon (a) a rehearing, (b) a bill of review? 3. Mention some circumstances in which proceedings in appeals differ from proceedings in writs of error at law.

ON LEGAL EXAMINATION DISTINCTIONS.

To the Editor of the Legal Observer.

"In ev'ry breast there beams an active flame,
The love of glory, and the dread of shame."

Sir,

I have long desired to add my mite in aid of the settlement of this question, which is of

great importance to the rising generation of lawyers, and to all who wish well to the reputation of the profession.

Notwithstanding some objections from the nervous, the desponding, the idle, and the dull, whose arguments were as weak as their fears were strong, legal examinations have been conclusively admitted to be good, and to bid fair to realize to a great extent the purpose for which they were instituted. The examiners have shewn judgment, consideration, courtesy, and kindness; and the examined have found that the ordeal was not the bugbear they dreaded, but a proper and acceptable method of testing their qualifications for the position in society they desired.

Now, it appears to me, that the awarding of honors is required to give completeness to this examination. The candidates may, I think, be divided into three classes. Those who seek the profession simply as a means of livelihood; those who have embraced it partly on this account, but more especially because it is more intellectual, and ranks higher in the scale of pursuits than any trade; and those (probably the least numerous class) who look upon it as affording scope for the loftiest intellect, and furnishing the means of doing incalculable good. How differently will these three classes pass through the trial scene? How differently must the examiners feel while perusing the replies, and how naturally must the wish spring up in their minds to confer upon those who have shewn superior merit, some mark of their appreciation.

How differently must these three classes conduct themselves during their clerkship—that period of probation? The first will look at every thing in a cold and worldly sense, treasuring up only that kind of knowledge which is purely practical, and impressing upon their recollection all the nice points wherein quirks and quibbles are included. From among them come the pettifoggers. The second class will be superior to this narrowness of view, but are very likely to pay too little attention to principles. Their chief ambition will probably be to gain knowledge of that kind of practice which is considered by the profession to be respectable. But the third class start *ab ovo*. Seeking law in its most extensive sense, and in its grandest generalities of principle, their soaring and capacious intellects find full occupation; and then applying the knowledge so acquired to the laws of the country in which they live,—with unwearied industry they trace the origin and fitness of these laws, and thus render themselves able, not only to act efficiently in their peculiar vocation, but as their own experience gets enlarged and perfected by the results of their own study and practice, to furnish aids for amendment and reformation where needed. Shall all these candidates be looked upon with equal eye? Shall no note be given of the wide difference in their worth? Look how differently, and with what different motives, they have studied: and shall there be but one fate to the noble and ignoble? Can the examiners feel that they have discharged

their duties, to their heart's content, when the same kind of certificate is given to the gifted and enthusiastic, and to those who have just scraped through, and whom, (because standing on the threshold of life—on the hither side of the Rubicon), they have in mercy and tenderness, albeit with stifled twinges of conscience, allowed to pass? Let there be no such injustice. The examination is very beneficial; let it be perfect. Satisfy the fair yearnings of the candidates; satisfy the natural anxiety and expectations of sympathising friends. Satisfy the world, that each one has been noticed according to his merit. Say not that the least proficient will be injured in the world's esteem. That cannot be. He has his licence to practise. He has been weighed in the balance, and not found wanting in sufficient knowledge and ability to enter upon his professional career. But you would not have him go forth a deception. He should not be allowed to pass for more than his worth. The examiners should have the power to stamp the value of the man; and there can fairly be no complaint of the coinage, since every one on whom they have set their seal, is permitted to pass current for the value impressed.

In this examination there consists not the personal and painful rivalry which is sometimes to be found at the Universities, and at other places where honors are bestowed. Here the candidates are, in the great majority of instances, strangers to each other before the eventful morning; there can therefore be no personal jealousy, pique, or desire, to supplant; and the written answers prevent any one but the examiners from knowing with what success each individual has applied himself to the task. Each one must feel a generous and honorable emulation to exalt himself above his fellows; and in the conviction that his efforts will be estimated in a liberal spirit, his best energies and feelings will be exerted to acquit himself to the utmost of his ability.

The love of fame is universal, and is a most powerful incentive to worthy actions. Let this noble motive, therefore, have fair play. It exists in all in a greater or less degree, and demands, as of right, fitting opportunities for its manifestation. Cherish this desire of distinction, so calculated

"The cold disponding breast of sloth to warm,
The flame of industry and genius fan;
And emulation's noble rage alarm,
And the long hours of toil and solitude to charm;"

and adequately reward the achievements it produces; so shall the profession attain a yet higher rank in the estimation of men, and its members be held up as bright examples of what may be effected by proper training, usefully acted upon by the stimulus of a healthy and honest ambition.

"PALMA NON SINE PULVERE."

Having observed several communications in your valuable work, relative to a system of

awarding some prize or distinction to a few of those gentlemen who should pass their examination with greater credit than others, it appears to me, that if that system were adopted, it would be necessary to award prizes to distinct classes; and for this reason: There are many gentlemen who apply to be examined every term, who (if I may so speak) are older in the law than others; and who have been from three to four years in the profession after the expiration of their articles, as managing clerks, and have had double the opportunities of acquiring practical knowledge, to the majority of the others who are examined at the same time.

I have therefore taken the liberty of addressing you, seeing that in such cases, and indeed in every case, the younger members of the profession, who, though they might be qualified to be admitted, would certainly have no chance of obtaining any distinction whatever, if such distinctions were limited to a few of the best examinaants; and it seems to me, that to render such a system useful (and which would undoubtedly act as a stimulant), the students would have to be divided into classes according to the number of years they may have been in the profession; and thus he who would seek to pass after five year's service, would have the same chance of distinction as he who had served eight or ten years.

A YOUNG ASPIRANT.

At this period, when the examination for degrees at the London University is yet fresh in the memory of your readers, it may not be inappropriate to recur to the theme of distinctions at our own. I recollect reading the letter of a fellow—"Sub Articulis" in your present volume, in which he advocates the distribution of some half dozen prizes among those who may excel on such occasions. Permit me to say, that he is a correspondent whose zeal I emulate, nor am I singular in this, for many whom I know, would try with him to be among "the six."

Now sir, when once emulation like this is roused, may we not confidently expect most fortunate results? At present, there is no fuel to nourish so laudable a flame. The student, who during his pupilage, diligently pursues his work, heedless of

"The toil by day, the lamp by night,
The visage wan, and poreblind sight,"

reaps no more honour at his examination than one who hardly bestows an average degree of attention; and it is repeatedly the case, that family connexion and resource procure a really ignorant young man, that business which the industrious apprentice cannot so readily procure. If study, then, will not insure a competence, there ought to be some honorary prize at least, which neither influence or favour could divert from those to whom it might be due.

Another reason too may be assigned in favour of these legal honours. Among the numbers of young men now educating for the

low, how many are there, most respectable by birth, and brilliant in ability, whose means entirely forbid them to partake "of the enjoyments and the benefits" which those derive who pass beneath the shadow of an University, "a season of wholesome and happy probation, before they enter on the cares and anxieties of manhood," and who, like the learned serjeant, whose words I quote, must ever "look on collegiate institutions with a stranger's love." To these who cannot seek the halls of "Alma Mater," and day by day compete with, and measure their attainments by those of their fellow-students, (which competition is the most enticing way to knowledge) how joyful and encouraging would the tidings be, that prizes, honors, or degrees, should pay their weary work, and something nobler far, and surer too, than monied gain, reward them for their past research?

For myself, then, and all who emulate a prize with me, I beg that this most interesting point may not be overlooked. There can exist no difficulty, I think, to hinder what we ask,—pecuniary there certainly is not, for a light fee,—five shillings say—from every candidate, would furnish ample funds for medals, or for any other prize which the examiners might choose.

Does not the hero whose sword has raised him above his comrades in the field, point proudly to the star which tells that he

"has won the battle for the free?"

Does not the distinguished student in the church gladly add to his own name, the letters which bespeak his days of toil and nights of wearying thought? Does not the judge boast his ermine and his coif, and the Queen's counsel of his silken gown? And what but honours such as these, excite them to the labors which distinguish them above their fellow-men? How hardly would I work, how hardly would we mostly work, did some few medals glisten on the table of our examiners. I trust that abler pens will soon come forth to advocate our cause;—they may ask more eloquently, but cannot wish it more sincerely, than your obliged and constant reader,

ÆMULUS.

MOOT POINTS.

JUDGMENTS.—LEASEHOLDS.

In reply to the enquiry of S. A., p. 169, *ante*, I am inclined to think, after a careful consideration of the 11th section of the 1 & 2 Vic. c. 110, that leaseholds are bound by judgments from the time that they are entered up. This construction is the only consistent one when we look at the general object of the act, and find words ample to include that interest in land.

If the purchasers had no notice of existing

judgments, he might, perhaps be advised to rest satisfied without a search, since purchasers *without notice* are bound by the 5th sec. of 2 Vic. c. 11, only according to the principles of the old law; and we are well aware that under the old law, leaseholds were not affected by judgments until the writ was in the sheriff's hands.

However, it is apprehended that the leaseholds in question remain charged in equity with the two judgments entered up more than one year before the bankruptcy, as *A. B.* has bought *with notice*; and that being the case, the fact that the judgments have not been registered at the Middlesex Register Office will not assist him.

F. P.

LEASE AND RELEASE STAMP.

Having occasion a short time ago to prepare a conveyance requiring a 12l. *ad valorem* stamp, I was unable to obtain such stamp with the lease for a year stamp attached. Upon reading the lease and release act, my impression was, that the lease for a year (on a separate skin) was not absolutely abolished, but that it is optional for a party either to make the conveyance under the provisions of the above act, or still to adhere, if he think proper, to the old practice.

Z. E.

ALIEN TENANT IN TAIL.

It has been decided (*vide* 4 Leon. 84) that a common recovery suffered by an alien tenant in tail, will be effectual to bar the issue in tail, and remainders dependent thereon. Will an assurance by a tenant in tail, similarly circumscribed under the act for abolishing fines and recoveries (tantamount in its declared effect to the latter assurance,) have the same effect.

A YOUNG SOLICITOR.

BANKRUPTCY DIVIDENDS.

A. accepts bills for the accommodation of *B.* *B.* becomes bankrupt, and the bills are proved against *B.*'s estate by third parties. *A.* afterwards pays the holders money on account. Can the assignees refuse to pay the holders a dividend on the whole amount, on the ground that they are only entitled to a dividend on the balance remaining due to them; or are they not entitled to receive a dividend on the full amount of their proof, provided that with the sum received of the acceptor, it does not amount to 20s. in the pound?

A SUBSCRIBER.

TERM'S NOTICE.—WAIVER.

A. B. brings an action against *C. D.*, and afterwards goes out of the jurisdiction of the Court. After delivery of declaration, an application is made for security for costs, and an order is granted, which *A. B.* was unwilling to comply with. After an absence of three years, *A. B.* returns to reside permanently in Eng-

land, and an application on behalf of *A. B.* is made to rescind such order. The defendant's attorney attends the summons, and on the merits it is dismissed—no objection as to the necessity of a term's notice of proceedings being made. On the dismissal of the summons to rescind the order for security for costs, the attorneys for both parties attend the master, and consent to payment of money into Court as security for costs. Can the defendant's attorney insist on a term's notice of proceeding?

J. C. C.

JOINT LEASEHOLDS.

An assignment was made of *leaseholds* to two persons and the survivor of them, his executors, administrators, and assigns, to hold to them for the residue of the term in the lease absolutely. Have the two persons an absolute power to assign during their joint lives; or is there a contingent remainder thereby created, so as to render it necessary to await the death of one before the usual words giving an absolute interest can apply?

F. E.

MORTGAGE.—JUDGMENT.—PRIORITY.

About five years ago, *A.* mortgaged the whole of his real estates to *B.* in fee. The mortgage deed contains the usual power of sale. *C.* has recently obtained, and duly registered, a judgment against the mortgagor. Since the registering of this judgment the mortgagee, in exercise of the power of sale, has contracted with *D.* for the sale to him of part of the estates comprised in the mortgage. The purchaser's solicitor, finding *C.*'s judgment duly registered, refuses to complete the contract unless the judgment be satisfied. It being doubtful whether the money arising from the sale of the estates will be sufficient to pay off the mortgage, can *B.* compel a specific performance against *D.*, without satisfying the judgment, and without obtaining the concurrence of the judgment creditor in the conveyance to *D.*?

A SUBSCRIBER.

NOTICES OF NEW BOOKS.

A Familiar Explanation of the Nature, Advantages, and Importance of Assurances upon Lives, and the various purposes to which they may be usefully applied: including also a particular account of the routine required for effecting a policy: and of the different systems of life assurance now in use. To which are added, the principles, terms, and tables, of seventy London assurance offices, and an extensive bibliographical catalogue of works on the subject. By Lewis Pocock, F. S. A. London: Smith, Elder & Co., 1841.

We have frequently treated of the Law of

Life Assurance, and noticed all the principal cases bearing on the subject. Perhaps there is no class of the community to whom life assurance can be so important as to our professional brethren, not only as regards their clients but themselves. The interests of the families of lawyers so generally depend on their lives, that none whose incomes chiefly arise from their professional exertions, should neglect to avail themselves of the advantages offered by insurance societies. The constant satisfaction of mind that must result from the discharge of this important duty, cannot fail to compensate for any temporary privation which may be suffered in effecting and continuing the object.

Feeling, therefore, the great importance of the subject, we gladly notice a useful book published by Mr. Lewis Pocock, affording a familiar explanation of the nature and advantages of assurances and the various purposes and transactions to which they may be applied. The following extracts from the preface will shew the scope and objects of the work.

"The present very general resort to the assurance of lives, and the active competition of the numerous metropolitan life assurance companies, seem to require a more circumstantial and familiar account of the principles upon which that security is founded, and a more particular guide to the different offices established in London, than has been hitherto published. On account of the abstract nature of the doctrine of probabilities, the rate of mortality, the comparative duration of life, and of an equitable premium to be paid upon an assurance of it, at every different age, and under every variety of circumstances, the works which have appeared upon the subject are comparatively few in number. There are not many writers who would voluntarily undertake the task, unless induced to do so either by professional occupation, or by their previous taste and study. From these causes, therefore, there are, perhaps, scarcely any subjects which have been treated with such an uniform degree of talent; most of the principal works upon life assurance being of very considerable excellence; and all having some part of the science more usefully enlarged, or more perspicuously explained, than it had been by preceding authors. In order that the materials for future enquiry may be furnished to such readers of the present volume as shall be desirous of cultivating a knowledge of this subject to an extent beyond that which is here afforded, a list of the principal books upon life assurance and annuities is given as an appendix to this treatise.

From the copious and excellent materials, and upon the secure foundation afforded by those authorities, the present volume has been constructed; not with the hopeless view of

adding to the information afforded by them, but with the design of rendering the whole subject familiar to the large class of readers who may be interested in it ; but who may have neither the opportunity, means, nor inclination of consulting the best works which have been written upon it. In common with most authors who have treated of an abstract science, nearly all those who have elucidated that of life assurance, appear to have considered it unnecessary to explain many particulars, as mere elementary matters with which ordinary readers ought to be acquainted ; or have explained them in too brief, technical, and scientific a manner to make them intelligible to such as know absolutely nothing concerning them. Much of the value of the best of these works properly consists in the elaborate and most important calculations which they contain ; though they are frequently found to conduce to no other end than to deter those who desire only to be plainly instructed in the nature and benefit of a life assurance, and the easiest and safest means of effecting it.

"The simple information required by such persons, occasionally illustrated by such historical or literary notices as appear to be connected with the subject, constitutes the only pretensions of this volume. As, however, the question which naturally arises out of such a statement is,—what are the comparative advantages of the several systems of, and offices established for, life assurance? the present work possesses one other feature, which it is confidently believed will render it even more extensively convenient and useful ; namely, an abstract of the conditions and terms on which insurances are effected by the different metropolitan associations, and the peculiar arrangements of each office.

"The design, therefore, with which this work has been produced, is to facilitate the extension of a clear and familiar knowledge of the science, benefits, and practice of life assurance ; united to the materials for selecting a plan and an establishment adapted to the circumstances of almost every individual case. The Author, therefore, hopes and believes that the contents of the following sheets may prove of the most material service to solicitors, agents, and private persons, in leading them to the most eligible means of benefiting by the many advantages arising out of this very important species of assurance."

The plan thus designed has been very ably executed. Evident pains have been taken to collect the most useful information, and the whole has been very carefully edited. Mr. Pocock, in treating of the advantages and general principles of assurance, considers amongst other topics, the manner of calculating casualties and probabilities ; and particularly the calculation of the probable chances of life. He then gives an historical account of the tables of mortality for life assurances ; next describes the mode

of effecting assurances, distinguishing the different systems of life assurance, and the rules and practice of the several offices established in London, and concludes with various useful tables.

The Police Law of the City of London and Metropolitan District, under the recent Statutes. By J. J. S. Wharton, Esq., Attorney at Law. London: E. Spettigue, 1841.

THIS is a well-arranged and useful little book. The provisions of the City of London Act, 2 & 3 Vict. c. 94, are classed under the following heads: 1. The Justices, their Warrants and Powers. 2. The Commissioner of the Police Force, his Duties and Powers. 3. The Constables or Policemen, and their Duties, &c. 4. Conduct of the Inhabitants, and the Public generally. 5. Apprehension of Offenders, and consequent Proceedings. 6. Appointment of Clerks and Officers. 7. Expenses of the Police Force, how raised, &c.

The law relating to the Metropolitan District (excluding the city) is thus arranged: 1. Extent of District. 2. Commissioners of Police, their Duties and Powers. 3. The Constables or Policemen, their Duties and Powers. 4. Offences on the Thames. 5. Fairs. 6. Conduct of Inhabitants, and Public generally. 7. Apprehension of Offenders, and consequent Proceedings. 8. Warrants, Summonses, and Witnesses. 9. Stolen Goods. 10. Common Informers. 11. Wages, Tenants, Distresses, &c. 12. Appeals and Actions.

From Mr. Wharton's preface, we extract the following remarks on the prevention and punishment of offences:—

"The security of the community is better maintained by a prompt administration of the preventive regulations, than by the severity of the punishment inflicted upon the convicted criminal. It was during the æra of the Portian Law, which abolished the punishment of death for all offences whatsoever, that Rome most flourished ; but when severe punishments and an incorrect police succeeded, the empire fell ! Severe punishments call forth acts of clemency and pardons, which clearly indicate 'a tacit disapprobation of the laws.' Laws, to be salutary and respected, should be merciful in themselves and should not need the clemency of the sovereign ; and besides, such laws would destroy that public sympathy towards criminals, which is now so frequently evinced by reason of our laws' severity.

"Now the end of all punishment is the improvement of the delinquent, and the preven-

tion of crime, by the terror of its example; and, above all, *by its certainty*; but where pardons are so frequently interposing the sovereign's prerogative of mercy against the operation of the law's severity, (by reason of which severity, in a great measure, the slightest informality in the form of the proceedings against criminals is admitted to quash such proceedings, whereby the guilty go unpunished,) is not *this certainty*, which is, I believe, the greatest preventive of crime, superseded by the *probability of the law's failure*, upon which the criminal stakes his impunity? And does not this state of things operate fearfully against the *law's authority*, by which alone it commands respect and obedience?

"Again, punishment intends the *reformation* of the person upon whom it falls, and should be administered so as not to defeat this intention. *Punishment*, therefore, in this sense, is synonymous with *correction*, and this is the only sense, together with its preventive influences, in which the legislature has any right to regard it, when framing the extent of it for any given crime. Now, if *death* be the infliction, the *punishment of death* is evidently contradictory in itself: the *expiation by death* is, therefore, the correct phrase; for the *improvement*, the *reformation* of the criminal is altogether put out of the question. *Death* is the *satisfaction*, the *atonement* for the crime. But the *expiation of offences* is divinely declared to be beyond the authority of mankind, and to be placed in the hands of God Himself alone.

"Then its infliction can be justified only upon the prevention of crime by the terror of its example (for its *certainty*, we have seen, is destroyed by its *severity*). Does it, then, prevent the perpetration of crime? The effects of public executions, and the depredations committed during the performance of the awful ceremony, sufficiently indicate that it does not deter.

"It appears to me, therefore, that the *end* of all punishment, being for *correction* and *prevention's* sake, and the *expiation by death* being *beyond correction*, and not succeeding, by its example, in *prevention*, that *death should be expunged from our Criminal Code*.

"I have confined myself to the fitness of the infliction of death as a *human institution*. This is not the place to inquire whether men, in their *artificial capacities* as legislators, have any right, any divine permission, to take the lives of their fellow-creatures upon any expediency whatever; the *same men* in their *natural capacities*, being prohibited by every law, human and divine, from so doing? It is a question of very serious importance to be determined.

"A punishment to be just, should have only that degree of severity which is sufficient to deter others, and no more."

"As to the *silent system* of punishment, it is my humble opinion, that it fails in its *corrective* object, inasmuch as it tends to undermine the powers of the mind and the body, and renders the criminal subject to it, incapable of entertaining ideas of improvement."

REMOVAL OF THE COURTS FROM WESTMINSTER.

We understand that on the meeting of Parliament, the Committee will be revived for inquiring into the subject of the removal of the Courts from Westminster to the vicinity of the Inns of Court. The evidence taken last session, completely established the case of the promoters of the measure; but not having been published, in consequence of the dissolution of Parliament, those who may still be opposed to the change, have not the means of judging of the various important details which were brought forward. The publication of the evidence will, no doubt, have the effect of removing the prejudice which still prevails.

The revision, now in progress, of the whole scheme of Chancery Practice and Proceeding, will strikingly show the insufficiency of the offices in which the business is transacted; and it will clearly appear, that in order to effect the object of the Judges in improving the administration of justice, and carrying out the intentions of the legislature, new and more commodious offices must be erected, adjoining each other; so that time may be saved to the practitioners, and ready communication take place between the respective officers. It is of the greatest importance, indeed, that all the offices should be brought together; and if the masters and registrars with the record officers and others, were all located in the same building as the courts, it is evident that a very effective superintendence might be attained, and each department stimulated to constant activity. The time and trouble that would be saved by a well-organized system, would enable the business to be despatched in half the time now occupied, and with double satisfaction.

HILARY TERM EXAMINATION.

It may be useful, in reference to the statistics of the profession, to give the following account of the persons to be examined in the ensuing term.

Our readers are aware that a list is printed of applicants for admission in the Superior Courts; but there is no printed list of the candidates for examination.

Number of printed admission notices	166
Deduct persons examined in Easter Term, 1841	1
Do. Do. Trin. Tm. 1841	2
Do. Do. Mich. Tm. do.	35
	38

	128
Do. admissn., but no exam. notices	1

	127
Add examn., but no admission notices	3

130

To prevent mistake, it may be well to repeat that the last day for leaving the testimonials of service is Monday the 17th instant, and Tuesday the 25th has been fixed for the examination.

SELECTIONS FROM CORRESPONDENCE.

PLEADINGS.—DEBT.

Sir,

PRACTITIONERS are often at a loss to decide on the form of action applicable to the wrong for which a client may seek redress; or, having fixed on one, a plea in abatement often compels him to begin the action *de novo*, after a considerable expenditure of money, and loss of time. Permit me to state a difficulty which has occurred to me, as to the application of assumpsit and debt.

The action of debt, I find, is brought where the certainty of the sum or duty appears, and the plaintiff is to recover the sum *in numero*, and not in damages. On what ground, then, is this action brought for goods sold, where, nine times out of ten, no price is fixed at the time of the sale?

How is it brought for use and occupation, when the certainty of the sum which the plaintiff is to recover cannot appear until it has been ascertained what the value of the premises for which the action is brought, is computed at?

I know a fixed sum is laid as damages in the declaration of an action, but I apprehend the certainty of the sum is not rendered "certain" from that circumstance, or what would be the utility of executing a writ of inquiry?

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Debt, as well as assumpsit, may be brought for goods sold, money lent, paid, had, and received, &c.

In what case or event is a plaintiff bound to elect to pursue one of these two forms of actions, for the causes of action last mentioned? Tradesmen's bills mostly consist of items sold at a fixed price, and others furnished to the customer, without any mention being made as to price. A bill is made out of the articles sold at a fixed sum, and a price put on the goods on which the customer has not agreed to give any fixed price. What must be the form of action, assumpsit or debt?

A distinction must exist, which perhaps one of your correspondents may feel inclined to explain.

L. M.

SUPERIOR COURTS.

Lord Chancellor.

WILL.—CONSTRUCTION.

A testator bequeathed all his property to his wife for life, remainder to children, to whom, as well as to the wife, he then gave several specific legacies: and in conclusion, mentioned particularly parts of the property, and gave it all with the residue to his wife: Held, that the wife took a life interest only in the property, and that it was not subject to be converted for the benefit of the legatees in remainder.

This was an appeal from a decree of the Vice Chancellor. William Henry Vaughan by his will bequeathed, first, the whole of his property to his wife for life, remainder to their children. He then gave some specific legacies to the wife and children, and proceeded: "As to my leasehold house, 1,000*l.* new 4 per cent annuities, 1500*l.* 3 per-cent consols, &c." "All this I give with the residue of my property to my wife." The bill was filed for administration of testator's estate, and for a declaration of the rights of the children, as their mother had married again. The Vice Chancellor was of opinion that the latter part of the will was only an enumeration of the property, and not giving it absolutely to the wife; but he was of opinion that there should be a conversion of the whole residue, for the benefit of the children, to take in remainder.*

Mr. Richards and Mr. Rogers, for the wife and personal representatives of the testator. The first parts of the will was inconsistent with the remainder of it, and also inconsistent in themselves. By the latter clause the testator gave the residue, after the specific gifts, to his wife absolutely.

Mr. Girdlestone and Mr. Steer for the plain-

* See 22 L. O. 125.

ties.—The clear bequest for life, in the first part of the will, was not to be enlarged by subsequent ambiguous expressions, which, in substance, went only to specify the property before given.

Mr. Bethell and Mr. Wilkinson for other parties.

Among the cases cited, were *How v. Earl of Dartmouth*, 7 Ves. 137; *Mills v. Mills*, 7 Sim. 401; *Bethune v. Kennedy*, 1 Myl. & C. 114; *Alcock v. Soper*, and *Collins v. Collins*, 2 Myl. & K. 699 and 703; and *Pickering v. Pickering*, 2 Bea. 31.

The Lord Chancellor, having taken time to consider the matter, said, the testator appeared by the will to have been very ignorant, and to have made the will himself. It was hard to say what construction was to be put on it. After stating the different parts of the will, he said he was clearly of opinion that the construction of it was not to give the property absolutely to the wife, and that that was not the testator's intention. After giving her the property for life by the former clause, it could not be supposed that by the latter he gave it to her absolutely. The contrary was the reasonable construction. He only stated and enumerated what the property consisted of which he had before given. The opinion of the Vice Chancellor was so far right. But on the next question, whether the testator gave the property to be enjoyed in specie or to be converted, the construction should be the same, as if the testator said, "I give" the property enumerated "with the residue and interest, if there should be any residue, to my wife for her natural life, and after her death to her children. The bequest of the house was clearly a specific bequest. The case of *Bethune v. Kennedy*, corresponded with this and was applicable. It appeared that the testator had no such stock as 4 per cents at his death, and it could not be said that the 3½ per cents were substituted. The decree must be varied so far as it directed a conversion of the residue into the 3 per cents.

Vaughan v. Buck, M. T. 1841.

DISCOVERY—PRIVILEGED COMMUNICATIONS.

Where official correspondence is required to be in the most unreserved nature, a third party is not entitled to the production of it on a bill of discovery.

THIS was an appeal against an order of the Vice Chancellor, directing certain letters, which passed between the defendants and the Board of Control for the affairs of India, and which were referred to in the defendant's answer to the plaintiff's bill of discovery, to be produced for his inspection. The plaintiff was captain of the ship *Dublin*, in the employment of the defendants; and on a voyage from Madras to China, in 1832, he put on board some merchandize of his own, for sale in the market at Canton, conceiving that by the custom in such cases, he was entitled to carry a certain quan-

tity of goods free from freight; and he had an understanding to that effect with one of the Company's officers at Madras. The agents of the defendants in China did not recognize the alleged right, and they stopped the full amount of freight out of the proceeds of the plaintiff's goods. On his return home, he brought an action against the defendants, to recover the money so detained from him; and in aid of that action, he filed a bill in Chancery for discovery, &c. In the answer to that bill, the letters, for production of which the plaintiff moved the Vice Chancellors's Court, were mentioned.

Mr. L. Wigram, in support of the appeal motion, insisted that this correspondence was privileged, as being confidential and official, relying on a case stated in Mr. Phillips' book on Evidence, p. 192.

Mr. Turner and Mr. Stevens, *contra*, referred to Mr. Starkie's book on Evidence, p. 71.

The Lord Chancellor, having taken time to consider the matter, said, the only question was whether the correspondence between the Board of Directors of the East India Company, and the Board of Control, contained in the answer of the defendants, should be produced. It was said that it should not, because it was of a confidential nature, and it would not be safe to the Company's affairs, or to the Government of India, to produce it. That was not a sufficient answer. Then it was said it was official correspondence; but official correspondence was not privileged, except there were special circumstances to protect it. Therefore it became necessary in this case to see what were the circumstances, and to look into the act of Parliament, the 3 & 4 W. 4, c. 85.^a His Lordship, after stating the effect of several sections of that act, observed that the Board of Control was to superintend and control all acts of the East India Company concerning the government of India, and particularly by the 29th section the Court of Directors was to deliver to the Board of Control all copies of minutes of the Courts of Directors and Proprietors, and of all material letters, &c. To superintend and control, and carry these provisions of the act effectually into execution, it was necessary the correspondence between the Board of Directors and Board of Control should be most unreserved. But if a third party was to be entitled to look into their correspondence, they should be more guarded and reserved. On this ground, therefore, it was his Lordship's opinion that those letters ought not to be communicated to the plaintiff, and therefore his application ought not to have been granted, and, consequently, the Vice Chancellor's order should so far be discharged.

Smith v. The East India Company, Nov. 2, and Dec. 19, 1841.

^a See Abstract and Commentary, 7 Leg. Obs. 288.

Rolls.

ADMINISTRATION OF ASSETS.—APPLICATION OF RESIDUE.

In a suit instituted for the purpose of realising a sum of money charged by a testator upon his estate, the Court will not, on the hearing on further directions, order payment of the surplus of such estate to the parties beneficially interested, without the consent of all parties, the usual course being, to order the amount to be paid into Court, with liberty to the parties to apply.

Pemberton and Metcalfe for the plaintiff, stated, that the bill had been filed to obtain payment of a sum of 800*l.*, charged upon the estate of the testator in the pleadings named; and on the hearing of the cause, a decree was made for a reference to the Master to take the usual accounts of the testator's personal estate; and if that proved insufficient to satisfy the claims against the estate and the plaintiff's charge, then that an account might also be taken of the testator's real estate, and a sale effected of so much thereof as should be sufficient to make up the deficiency of the personal estate. The Master, having taken the usual accounts, and the real estate having been sold under his direction, the cause now came on for further directions, and there being a surplus after satisfying all the specific claims upon the testator's estate, the only question was, how such surplus should be disposed of.

Torinn for one of the defendants, who was entitled to a moiety of the residue, asked that such moiety might be ordered to be paid to his client.

The Master of the Rolls said, that the prayer of the bill only applying to the plaintiff's charge, the usual order was, that any surplus should be paid into Court, with liberty for the parties to apply; but if all parties consented, he would make the order asked for.

Green v. Green, Dec. 7, 1841.

Vice Chancellor of England.

PRACTICE.—PRISONER.—CONSTRUCTION OF 1 W. 4, c. 36.

A prisoner in custody under an attachment for not answering, is not entitled to be discharged in consequence of his having been brought before the Court after the return of the habeas issued, pursuant to rule 5 of the 1 W. 4, c. 36, s. 15.

Fisher moved that a defendant in custody for not answering, and against whom an attachment had been lodged by way of detainer, might be discharged on two grounds; first, that the attachment was returnable on the 20th of May, 1831, and although the next term did not end till the 22nd of June, and there were consequently more than thirty days between the return of the attachment and the end of the term, yet the *habeas* required by the 5th rule of the 1 W. 4, c. 36, s. 15, was not sued out till within the first four days of Michaelmas term following; and secondly, that although the *habeas* was

returnable on the 2nd, the defendant was not brought up till the 4th of November.

The Vice Chancellor said, the defendant was in fact brought up to the bar of the court within the first four days of the term specified in the 5th rule of the 1st W. 4, c. 36, s. 15, because the last day of Trinity term, 1831, as the registrar had certified, was the 13th of June, and consequently there not being thirty days between the return of the attachment and that day, he was to be brought up within the first four days of Michaelmas term. With regard to the second objection, his Honor said, he did not think it could be sustained, because the act merely prescribed that a defendant in custody should be brought up by *habeas*, but there was nothing in it requiring him to be brought up before the return of such *habeas*. The motion must therefore be refused with costs.

Culley v. Candlin, December 9th, 1841.

PRACTICE.—INJUNCTION.—MULTIFARIOUSNESS.

A bill for an injunction to restrain parties from erecting a nuisance, filed in the names of several persons as co-plaintiffs, all having distinct interests, cannot be sustained, although the object sought to be accomplished by each may be the same.

In this case an injunction had been obtained *ex parte*, some months ago, to restrain the defendants from erecting a steam-engine and a chimney connected therewith, for the purpose of working certain saw-mills in the town of Louth, in Leicestershire. The bill was filed by several of the inhabitants of Louth, who represented the nuisance as likely to prove intolerable in case the erection should be permitted, and it simply prayed for an injunction. No affidavits had been filed in answer to the case made out in support of the injunction; but an objection was taken to the pleading on the ground of multifariousness, and a motion was now made, principally on that ground, to dissolve the injunction.

Bethell and *Anderdon*, in support of the motion, stated that the suit was bad for multifariousness, and cited *Cowley v. Cowley*, 9 Sim.; *Jones v. Garcia del Rio*, Turn. & Russ. 297; and contended that the Attorney General ought to be a party.

Richards and *Koe*, *contra*, insisted that if a private individual complained of a nuisance to himself, his bill would be sustained without making the Attorney-General a party; and cited *Sampson v. Smith*, 8 Sim. 272. As to the objection of multifariousness, where each of several plaintiffs had a distinct right and title, but the injury was common to all of them, they might join to restrain the nuisance. Story's Equity Pleadings, p. 341.

The Vice-Chancellor said, the only question was whether the case came within the principle laid down by Lord Eldon in *Jones v. Garcia del Rio*. The cases where the Attorney-General was joined as representing the whole community with single persons as relators and plaintiffs, only amounted to this, that

those who stood as relators did that only as plaintiffs which had already been done by the Attorney-General in filing the information. But there was no authority to show that persons in separate capacities and having independent interests, could file a bill jointly, and pray a certain relief in respect of that which separately affected the individual interests of each. His Honor then referred to the case of *Cowley v. Cowley*, the decision in which he stated had since been approved by Lord *Cottenham*, and continued: "In the present case a bill is filed by five persons, each having a separate and independent interest, representing that the steam-engine in question will be a nuisance to the tenement of each individually. They therefore join their cases together: but what is an answer to one may not be an answer to another; and if a decree were pronounced, there must be a decision for five different cases. It is now settled that to such a bill there can be no relief; and as the bill only prays an injunction, and the case made by it cannot by the law of the Court be supported at the hearing, the injunction granted *ex parte* must be dissolved.

Hudson v. Muddison, Dec. 21st, 1841.

PRACTICE.—ATTACHMENT.

If it should be proved on a return of non est inventus to an attachment, that the sheriff has neglected his duty in not arresting a party whom he might have taken, the Court will, notwithstanding, grant an order for a Serjeant at arms.

In this case, an attachment had been issued against the defendants for not answering, to which the sheriff had returned *non sunt inventi*, and

Whatley now moved for an order for the serjeant at arms to take them into custody, upon an affidavit of the solicitor, who stated, that they had been residing at their usual places of residence ever since the attachment had issued, and that the sheriff might have executed the attachment at any time if he had thought proper to do so.

Order granted.—*Thomas v. Shirley*, Nov. 10, 1841.

CREDITOR'S SUIT.—ADMINISTRATION OF ASSETS.

A suit instituted for the administration of a testator's estate, will not be allowed to proceed after a decree has been obtained in another suit for the same purpose, at the instance of a creditor of the testator, although in consequence of the time for answering having expired in the first suit, the solicitor who filed the bill in the second suit, may have given an undertaking to put in the answer in the first suit, within a specified time.

The original bill in this cause was filed on the 26th of August last, against the executors

of the testator named in the pleadings; and it prayed the usual accounts of the testator's estate. The time for answering expired, and the answers not having been put in, attachments were sealed on the 12th. Mr. Weeks, the solicitor of the defendants, thereupon applied to the plaintiff's solicitor, and requested him not to put the attachments in force, undertaking to put the answers in within three weeks, that he would not take any advantage of the time given, and that the plaintiff should not be prejudiced. The time was accordingly given, and within a few days after Weeks filed a creditor's bill, in which he prayed that it might be referred to the Master to take an account of the real and personal estate of the testator, and of his debts; and that the usual directions might be given for the administration of the assets which might be realized from the testator's estate. The answers having been put in to this second bill, a decree was obtained on the 22nd of November, according to the terms of the prayer; and a motion was now made on behalf of Weeks, the plaintiff in the second suit, that all further proceedings in the first suit might be stayed.

Richards, in support of the motion, stated the above facts, and urged that there was no longer any necessity for continuing the proceedings in the first suit, inasmuch as the relief therein sought might all be satisfactorily obtained through the medium of the decree already obtained in the second.

Stuart and Koe, *contra*, contended that the Court would not interfere to prevent accounts being obtained in a prior suit against executors, if it appeared there had been any collusion in obtaining a decree in a subsequent one; and it was evident that, in this case, the decree had been improperly obtained; for although by the bill filed in the second suit, the defendant, Rumsey Williams the executor, was required to set forth an account of the testator's personal estate, yet no such account was furnished. The motion ought either to stand over till the answer should be put in, or refused with costs.

Bethell, for the executors, denied any collusion, and stated that he was instructed by a different solicitor to the solicitor employed by the plaintiff, to appear for them.

The *Vice Chancellor* said he must make the order applied for. The question was, whether the Court should permit the assets of the testator to be wasted by two suits, when an effectual decree had been made in one. If collusion could be shewn, the parties interested to prevent waste, should apply to the Court by a distinct motion; but if the decree in the first suit were effective, there could be no use in continuing vexatious proceedings, because all the accounts might be taken in the Master's Office, and the assets would then be nearer distribution, which was the main object. No case was made out to shew that there had been, or was likely to be, a misapplication of the assets; and his Honor said he objected to the reasoning that proceedings were likely to be most effectual which extorted an account by answer; for he considered the proceedings most

likely to prove effectual, to be those which obtained an account by decree. Order granted.

Roberts v. Williams.—*Weeks v. Williams.* December 3rd and 15th, 1841.

Vice Chancellor Wigram.

WILL.—REFERENCE.

Where a testator leaves property to children generally, without naming them, the Court will invariably refer it to the master to ascertain whether all such children are before the Court ; and semble, this is of course, even though the trustees express themselves satisfied.

George Raikes by will, amongst other things disposed of his personality as follows ; " I give to my dear wife all my goods and chattels, with the intent that she may dispose of the same for the benefit of my children in such manner as she may deem most advantageous." The plaintiff being the widow and residuary legatee, prayed a reference to the master. Certain parties interested in the estate, and the children were the defendants, and resisted a reference.

Mr. Temple for the former.—It is the rule of the Court, that where children are described generally, the Court, by its officer, ascertains that all of that class are before the Court.

Mr. ——— for the defendants. Where the trustees say they are satisfied that all of the class are known, it is sufficient. Lord Langdale in recent cases has invariably asked, What do the trustees say ? are they satisfied ? Here they are satisfied.

Vice Chancellor Wigram.—The rule of Lord Cottenham on this point is inflexible, and I cannot without some decision upon the subject venture to depart from it. In many cases the expense is useless ; but still it is a safer course, in such cases, to take a reference to ascertain what children there are before distribution.

Raikes v. Ward, M. T. 1841.

BILL OF EXCHANGE.—DEMURRER.—INSOLVENT.

Where an indorsee of a bill, greatly over due, and upon which payment could not be obtained from the acceptor, sues the drawer, who, since the date of the bill, has been discharged under the Insolvent Act, and who has inserted it in his schedule, a bill filed to have the same delivered up and to restrain proceedings at law, is not generally demurrable upon the ground of valuable consideration having been given for such bill,—the non-payment by the acceptor,—and a defence at law ; but a demurrer ore tenus will be supported, on the ground that the assignees are not parties.

The plaintiff Balls, drew a bill of exchange for 70*l.* upon one Lyon, who accepted the same, value having been given for it. Balls, for his own convenience, put it into the hands of a person named Lindus, and endorsed it to him without consideration, that he might recover money upon it for the use of Balls.

Lindus not being able to do this, indorsed it to the defendant Strutt, without consideration, that he might recover the proceeds and hand them over to the plaintiff, who became insolvent and took the benefit of the act. It appeared that the plaintiff had been indebted to the defendant and his partner, for professional business, and had been included in the schedule. Lyon, the acceptor, was unable to pay, and no proceedings had been taken against him by the assignees. The defendant then commenced an action against the plaintiff for the value of the bill. The latter thereupon filed a bill praying a discovery, that the bill of exchange might be delivered up, and that the defendant and his partner might be restrained at law, and also from indorsing over the said bill. The bill stated the facts above narrated. The defendants demurred upon the grounds, that the bill had been originally given for a valuable consideration ; that nothing had been or could be obtained from the acceptor, and that if Balls had a good defence to the action at law, he could not obtain the interference of a Court of Equity. They also demurred *ore tenus* for want of parties, the assignees not having been joined.

Mr. Bilton for the defendants ; Mr. Walford for the plaintiff.

The Vice Chancellor said the rule was, that if the plaintiff was entitled to any relief, the general demurrer must fail. Here the defendant Strutt was clearly a trustee for the assignees as regarded the bill of exchange. The action sought to be restrained, was, in fact, an action by a trustee against his own *cestui que trust*, and the bill of exchange, if the property of anybody, belonged to the assignees. He would by no means decide what the Court would decree on the hearing as to giving up the bill of exchange. As to the other part of the prayer relating to the action, he thought there would be no difficulty, supposing all the parties were before the Court. The assignees having an interest ought to have been made parties, and on this ground alone could the demurrer be supported. The general demurrer must be overruled. The plaintiff might amend his bill, either by altering the prayer, or by adding parties.

Balls v. Strutt and others, December 10th and 11th, 1841.

Queen's Bench.

[Before the four Judges.]

INDICTMENT.—REPAIR OF ROAD.—NEW TRIAL.

In a prosecution for a misdemeanor, where the verdict is for the defendants, there cannot be a new trial. But the Court may suspend the judgment till a new indictment has been preferred.

Where a road was proved to have been used by the public above forty years as a cart road, and long before that time as a pack horse road (before carts were known in that part of the country) the Judge left it to the jury, whether there had been an actual dedication of it to the public, as without such a dedication, the parish could not, since

the 5 & 6 W. 4, c. 50, be liable for repairs: Held, that this was a misdirection.

This was an indictment against the defendants for the non repair of a road. The case was tried before Mr. Justice *Maule* at the last assizes for Devonshire. It was proved that the road, which ran across part of a common, had been a pack-horse way from time immemorial; that carts had only been introduced into that part of Devonshire about forty years ago, and that from that period, the road had been used as a cart road, as well as a pack-horse road. In charging the jury, the learned Judge, referring to the act 5 & 6 W. 4, c. 50, a left it to the jury to say whether there had been any express dedication in fact in this case, for without such dedication the defendants were not liable to repair. The jury returned a verdict for the defendants.

Mr. *Bere* now moved for a rule to set aside this verdict, and have a new trial. In cases of misdemeanor, the rule against a motion for a new trial, where the verdict has been for the defendant, does not apply. *Gregory v. Papp.*^b The permission of the owner to the public to use a way as a road, was itself a dedication, before the passing of the recent statute, and no notice of the sort now required was at that time necessary.^c The learned Judge, therefore, misdirected the jury, when he applied the recent statute to the case of a road where the public had by user acquired a settled right many years before that statute was passed.

Cur. adv. vult.

Lord *Denman*, C. J.—We have seen Mr. Justice *Maule*, and have considered the case. We think that his Lordship laid down the law too narrowly, and that there ought, therefore, to be a new trial. The rule would, consequently, be granted in an ordinary case; but here there is a difficulty of form. In a prosecution where the verdict is for the defendant, there cannot be a new trial. But to meet that difficulty, we here shall suspend the judgment till a fresh indictment can be preferred.

Rule accordingly.—*The Queen v. The Inhabitants of Chullicombe*, M. T. 1841. Q. B. F. J.

LIBEL.

In an action of libel, where the words are not libellous of themselves, and where the imputation sup-

a s. 23, by which it is provided, that no road or occupation way, made or hereafter to be made at the expense of any individual or private person, body politic or corporate, nor any road set out, &c. in any award of commissioners under an inclosure act, shall be deemed or taken to be a highway, which the inhabitants of any parish shall be compellable or liable to repair, unless the person, &c. proposing to dedicate such highway to the use of the public, shall give three calendar months' previous notice in writing to the surveyor, of his intention to dedicate such highway to the use of the public.

^b 1 Crompt. Mec. & Ros. 30.

^c 1 Stark. on Ev. 665, 1 edit.

posed to be conveyed by them, is one of which the Court cannot take judicial notice, the declaration must clearly allege the matter in respect of which the written words are deemed libellous; and the want of such allegation cannot be legally supplied by proof at the trial; nor, if such proof be given, can the verdict founded upon it be sustained.

This was an action for the publication of a libel. The declaration stated that the plaintiff was a Roman Catholic priest, officiating at a certain chapel therein described; and that the defendant, intending to injure &c., wilfully published of and concerning him, and of his office of priest, the following false, &c. libel. The declaration then went on to represent that the defendant had made a speech, in which he described a certain paper held in his hand, as a document which the declaration alleged the defendant to have published of and concerning the plaintiff, as the minister of the said religion, and of the said chapel. The paper described the indictment by the plaintiff of a penance upon a Roman Catholic who attended at the plaintiff's chapel, the penance being that of the penitent walking on his bare knees over the stones, in default of the performance of which penance, the priest would refuse absolution to the penitent. The cause was tried before Mr. Baron *Rolfe* at Liverpool, when a verdict was found for the plaintiff, damages 40*l.* A rule had since been obtained to arrest the judgment.

The *Solicitor General*, Mr. *Hoggins*, and Mr. *Murphy* shewed cause.—This is a case not of oral but of written slander. If the written slander has the effect of lowering the character of the plaintiff, and the jury had so found it, the judgment cannot be arrested. The Court will not inquire into the propriety of the conclusion arrived at by the jury. One argument in favour of this application, is, that the Court will not take notice of what are the duties of a Roman Catholic priest. The Court is not asked to do so. Evidence of that nature has been given. Evidence was given at the trial, shewing, that if the plaintiff had imposed such a penance as the libel represented, the plaintiff would be suspended by his superiors from his functions and office in his church. Now, anything that lowers a man in the minds of the persons with whom he associates may be the subject of an action of libel. *Clegg v. Laffer*,^a *Digby v. Thomson*.^b But it is not necessary to contend that this publication is libellous in itself, because it relates to the plaintiff in his business or profession, and being written, it may be libellous if it is likely to injure him in any way. In the broadest sense of the word, a written publication, even if it does not inflict any injury, may still be a libel. *Fisher v. Clement*.^c And in *Gardner v. Williams*,^d it was held that, after verdict, all matters necessary to support that verdict will be presumed. That

^a 10 Bing. 250.

^b 4 Barn. & Ad. 821.

^c 10 Barn. & Cres. 472.

^d 2 Crompt. M. & R. 28.

presumption must be made here. But the publication here is libellous, according to what is the definition given of a libel by Mr. Baron Parke, in *Purniter v. Copeland*,^e namely, "a publication without justification or lawful excuse, which is calculated to injure the reputation of another, and to bring him into hatred, contempt, or ridicule." This publication is calculated to produce all these effects, and also to injure the plaintiff in his interest.

Mr. Creswell and Mr. W. H. Watson, in support of the rule.—There is, in the first place, nothing to shew that the defendant published the words complained of. The defendant was proved to have spoken something as from a written paper, but he was not shewn to have written the paper, nor to have afterwards published the speech. There is no imputation on the plaintiff that was libellous in itself. But then it is said that there was evidence that if the plaintiff had imposed the sort of penance here spoken of, he would have been liable to censure from his superior, if not to suspension from his office. But there is nothing in the declaration alleging that the uttering of these words would have subjected the plaintiff to such temporal damage. There is not even any statement that the penance enjoined was contrary to the rules of the Roman Catholic church. So that if that question was left to the jury, the judge left something, which, not being the subject of any issue raised on the record, ought not to have been so left for their consideration. *Forbes v. King*,^f and *Ayre v. Craven*.^g This cannot be compared to the case of words published respecting a clergyman of the church of England, for in the English church the forms in the prayer book are settled under the authority of an act of parliament. The argument as to presuming enough from the verdict in order to support the verdict amounts to this, that no judgment could ever be arrested in an action for libel, where the verdict has been found, for, according to that argument, the verdict itself must be taken to supply all that is necessary to sustain it. That is not consistent with the case of *Goldstein v. Foss*,^h where the Court would not presume anything but what was on the record. *Sweetapple v. Jesse*,ⁱ is to the same effect, the Court there deciding that nothing is to be presumed after verdict, but that which is necessary to support the allegations in the declaration. On both grounds, therefore, this judgment must be arrested.

Lord Denman, C. J.—We have considered this case, and are clearly of opinion that the rule for arresting the judgment must be made absolute. In a very early period of the discussion, the Court felt much doubt whether there was any sufficient allegation on the face of the declaration of any libel having been published of and concerning the plaintiff. The only allegation of the sort, is one which relates to something that might affect the

plaintiff in his character of a Roman Catholic priest, and in his performance of the duties which that character imposes upon him. The charge supposed to affect the plaintiff's character relates to the imposition of a particular penance, and to the refusal to grant the sacraments of the Roman Catholic church, until that penance had been performed. What are the duties properly belonging to the character of a Roman Catholic priest, is a matter of which this Court cannot take judicial notice, and as to which the Court has not been able to receive any information according to the rules of law. It has been objected on the part of the defendant, that the declaration is insufficient in this respect, that it does not allege what are the duties of a Roman Catholic priest, and does not show in what manner the plaintiff has neglected or violated those duties. But it has been answered on the part of the plaintiff, that supposing this deficiency to exist in the way of allegation, it has been supplied by the evidence adduced at the trial, which showed that had the plaintiff acted as represented in the libel, he would have been liable to the reprimand of his superiors, and would have lost his advancement in the Roman Catholic church. But it was properly observed, that this evidence was in law inadmissible, inasmuch as the points to which it related was not put in issue by the record. Then it was contended for the plaintiff that this defect was cured by the verdict. But the same answer is again applicable here. For if the evidence was inadmissible, the verdict founded upon that evidence cannot be supported. It is not sufficient merely to allege a malicious intention on the part of the defendant, or to show that an injury has in fact resulted from the publication of the words. The words themselves must be shewn in a proper manner to be libellous, for otherwise the most innocent words becoming by accident injurious, may be made the foundation of an action of libel; or words published with the most malicious intent, and deserving to incur responsibility, may escape it, the malice being disappointed by the result. On the whole, therefore, we are of opinion, that the rule for arresting the judgment must be made absolute.

Rule for arresting the judgment absolute.—*Hearn v. Stowell*, Q. B. F. J. M. T. 1841.

Queen's Bench Practice Court.

NOTICE OF DECLARATION.—VARIANCE.—WAIVER.—DEBT.—PROMISES.

In a case, where the notice of declaration described the form of action as in debt, while the writ and declaration were on promises, it was held, that taking the declaration out of the office by the defendant, waived the objection.

This was an action of assumpsit, and the writ described the form of action as "on promises." The declaration was also on promises. The defendant not having entered an appearance for himself, the plaintiff entered one for him,

^e 6 Mee. & Wels. 105.

^f 1 Dowl. P.C. 672. ^g 2 Adol. & Ell. 2.

^h 6 Barn. & Cres. 154.

ⁱ 2 Nev. & Man. 36; 5 Barn. & Adol. 27.

pursuant to the statute, and filed the declaration. In the notice of declaration, the form of action was described as "in debt." Subsequently, the defendant took the declaration out of the office where it was filed. Afterwards,

Thomas obtained a rule nisi for setting aside the notice of declaration, on the ground of the variance between the description of the form of action given in it, and the writ; the former being on promises, and the latter in debt.

Couch shewed cause against the rule so obtained by *Thomas*, and submitted that taking the declaration out of the office operated as a waiver of the objection founded on the variance. The defendant was perfectly aware of the objection which he now sought to enforce, at the time he was served with the notice of declaration. If, therefore, he intended to avail himself of it, he was bound to come at once to the court, and had no right to take another step in the cause, by taking out the declaration from the office, and then endeavour to make the variance a ground of objection to the plaintiff's proceedings.

Thomas supported the rule, and contended that the defendant was not in a situation to avail himself of the objection to the variance until he had taken the declaration out of the office. Taking the declaration out of the office, consequently, did not operate as a waiver.

Wightman, J., was of opinion that the defendant, by taking the declaration out of the office had waived any objection which might otherwise be available on the ground of variance. The case might be different before the Uniformity of Process Act, as until the declaration was obtained, no objection appeared in the plaintiff's proceedings, as the plaintiff might declare in a form of action different from that stated in the writ; but since that statute, as the process stated to the defendant the form of action brought by the plaintiff, the defendant was aware of the objection on receiving the notice of declaration, without taking the declaration out of the office. Taking the declaration, therefore, out of the office, being unnecessary in order to enable the defendant to become acquainted with the objection, it was waiving the objection to take it out. The present rule must therefore be discharged.

Rule enlarged.—*Heywood v. Frayrer*, M. T. 1841. Q. B. P. C.

AWARD.—ATTACHMENT.—SHEWING CAUSE.—PAYMENT OF MONEY.

If a rule has been obtained calling on a party to shew cause why he should not pay money in conformity with the directions of an award, he may, on shewing cause against that rule, make the same objections which would be available on shewing cause against a rule for an attachment for non-payment of the money.

In this case a rule nisi had been obtained, calling on a party to shew cause why a sum of money should not be paid by him pursuant to an award. The object of the application was

to obtain a rule for the payment of money with the effect of a judgment, pursuant to 1 & 2 Vic. c. 110, so as to issue execution thereon. On the face of the award it appeared that the arbitrator had allowed the time for making his award to pass without duly enforcing it, and had then made his award.

Ogle, who shewed cause against this rule, contended, on this ground, that the rule could not be made absolute.

Byles, who appeared to support the rule, contended that the objection could not be taken in shewing cause against this rule.

Patteson, J., thought that as this was an objection which would be available on shewing cause against a rule for an attachment, it was equally available on this form of application.

Rule enlarged.—*Kerr v. Geston*, M. T. 1841. Q. B. P. C.

DISTRINGAS.—AFFIDAVIT.—DEFENDANT'S RESIDENCE.—COMPELLING APPEARANCE.

Where it is sought to compel an appearance by a distringas, the affidavit for that purpose should state the residence of the defendant, as well as the facts which, it is suggested, shew the defendant to be keeping out of the way to avoid service.

In this case a writ of summons was sued out against the defendant, and a variety of efforts were made for the purpose of serving him with the writ. This was, however, without avail, and in order to compel appearance, the regular calls and appointments were made, in conformity with the practice of the Court.

V. Douling moved for leave to issue a distringas on an affidavit which stated the above facts, but it did not mention the place at which the defendant resided. The question was whether it was necessary that such a statement should be made in the affidavit.

Patteson, J., thought it necessary that such a fact should be mentioned in the affidavit, but gave leave to amend accordingly.

Rule refused.—*Bradbee v. Gustard*, M. T. 1841. Q. B. P. C.

JUDGMENT AS IN CASE OF A NONSUIT.—INSOLVENT.—AFFIDAVIT.—STET PROCESSUS.

Where a rule for judgment as in case of a nonsuit has been obtained, and it appears that the defendant has disposed of his property since the joinder of issue, and declared his intention to go to prison if he failed in the action, the court will discharge the rule with costs, unless the defendant consents to a stet processus.

H. Hill shewed cause against a rule nisi obtained by *Gray* for judgment as in case of a nonsuit. The answer to the rule was, that the defendant had disposed of all his property since issue had been joined, and that in a conversation between him and a deponent, who made an affidavit on the present occasion, he had stated his intention to go to prison if he should be unsuccessful in the present action. On such a state of facts as these, the defendant ought not

to have obtained the present rule. The plaintiff having been informed of them was abundantly excused for not proceeding to trial. The present rule ought therefore to be discharged with costs. The plaintiff was however willing that a *stet processus* should be entered.

Gray, in support of the rule, contended, that although the facts in question were stated on behalf of the plaintiff, it was not sworn in his affidavit that they were the real reason for his not proceeding to trial. In order to furnish an excuse for not so proceeding, it should have been shewn that it was on account of the existence of those facts that he had not proceeded to trial. Not having done so, he had not placed himself in a situation to call upon the Court to discharge the rule with costs, or upon the defendant to consent to a *stet processus*.

Putteson, J.—I think the present rule must be discharged with costs, unless the defendant will consent to a *stet processus*.—Rule accordingly.

Yates v. Trott, M. T., 1841. Q. B. P. C.

JUDGMENT AS IN CASE OF A NONSUIT.— SETTLEMENT OF ACTION.

If a plaintiff and defendant have settled an action by the payment of debt and costs, the court will discharge a rule for judgment as in case of a nonsuit, obtained by the defendant after such settlement, but will not discharge it with costs, unless it is shewn clearly on the part of the plaintiff that it did take place before the rule was obtained.

James shewed cause against a rule nisi, obtained by *M. Chambers*, for judgment as in case of a nonsuit. It appeared by the affidavits in answer to the rule, that the defendant had communicated with the plaintiff after issue joined, and had paid the amount of debt and costs claimed and incurred. On these grounds, it was submitted that the present rule ought to be discharged, and with costs.

M. Chambers, in support of the rule, contended that it did not appear clearly from the affidavit produced by the plaintiff that the rule had been obtained after that settlement. Although the rule might be discharged, it ought not to be discharged with costs.

Putteson, J.—It was the duty of the plaintiff to make it clearly appear at what time this settlement was made. As it does not, I think the present rule may be discharged, but without costs.—Rule discharged without costs.

Paseford v. Collins, M. T., 1841. Q. B. P. C.

WARRANT OF ATTORNEY.—EJECTMENT.—ATTESTING WITNESS.—1 & 2 Vic. c. 110, s. 9.

Where a warrant of attorney is given in an action of ejectment, it is not requisite that an attorney should attest the execution of the instrument pursuant to the directions of 1 & 2 Vic. c. 110, s. 9.

This was an action of ejectment. The defendant, pursuant to an arrangement between him and the lessor of the plaintiff, gave a warrant of attorney to the latter to confess judgment in the action. On that occasion no

attorney attended on behalf of the defendant to give him the explanation and information, or to attest the instrument in conformity with the provisions of the 1 & 2 Vic. c. 110, s. 9. Subsequently the lessor of the plaintiff signed judgment, pursuant to the warrant of attorney, and afterwards issued execution. A writ of possession was accordingly sued out, and put in force. An application was then made, and a rule obtained to set aside the warrant of attorney, and all subsequent proceedings thereon, on the ground that the provisions of the 1 & 2 Vic. c. 110, s. 9, had not been complied with.

Fortescue shewed cause against this rule, and contended, that as the words of the statute were wholly applicable to personal actions, and ejectment was a mixed action, the requisites of the statute were not applicable to such a case as the present. The words of the section were: "that no warrant of attorney to confess judgment in any *personal* action or *cognovit actionem* given by any person," shall be of any force, unless there shall be present some attorney of one of the Superior Courts on behalf of such person, expressly named by him, and attending at his request to inform him of the nature and effect of such warrant or *cognovit*, before the same is executed; which attorney shall subscribe his name as a witness to the due execution thereof, and thereby declare himself to be attorney for the person executing the same, and state that he subscribes as such attorney. The language of the section, therefore clearly confined the operation of its provisions to "personal actions." The action of ejectment was a mixed action. It was unnecessary to cite authorities to shew that that was the nature of the action. If any authority was necessary, the statute of the 3 & 4 W. 4, c. 27, s. 36, was sufficient, as there the action of ejectment was treated as a mixed action. Where the legislature had used language so clear as that of the 9th section of the statute, on which the present application was founded, it was impossible to extend its operation to any other cases than those expressly mentioned. Those cases were "personal" actions, and therefore the present case cannot be considered as within it.

Erle, in support of the rule, contended, that if the preamble of the section in question was considered, it must be clear that the legislature intended that the present case should be within its operation. The words of the preamble were: "and whereas it is expedient that provision should be made for giving every person executing a warrant of attorney to confess judgment, or the *cognovit actionem*, due information of the nature and effect thereof." The word "every" evidently extended to all persons and to all warrants of attorney. The language of section 10, also, was equally general in its provisions with respect to the necessity for a strict compliance with the provisions of the 9th section. The object of the act of parliament must clearly have been to convey information to the party who was about to execute a warrant of attorney, and to protect him by the presence of a legal adviser.

Such information and protection were clearly as necessary, if not more so, in an action of ejectment, as in any personal action. The language, therefore, of the preamble, and of the 10th section being thus general, and the intention of the legislature being evident that the provisions of the 9th section should be complied with, the present rule ought to be made absolute for setting aside the warrant, and all subsequent proceedings.

Cur. adv. vult.

Patteson, J., thought that the words of the section being confined to personal actions, it was not necessary that a warrant of attorney in an action of ejectment should conform to the provisions of the section.

Rule discharged.—*Doe d. Kingston v. Kingston, M. T. 1841. Q. B. P. C.*

Common Pleas.

CASE.—NEGLIGENCE.—NONSUIT.

The plaintiff declared in case against the Great Western Railway Company, and alleged that the defendants so negligently managed their steam engine, that sparks of fire flew from the engine upon a stack of beans, and the same was burned. The stack was eleven yards from the Railway: Held, that there was evidence of negligence, and that the defendants were not entitled to a nonsuit, and that the case must therefore be tried by a jury.

In this action, a special case was stated for the opinion of the Court under the 3 & 4 W. 4, c. 42, s. 25; by order of a learned Judge. The case stated in effect, that the action was brought to recover the value of a stack of beans belonging to the plaintiff, which had been destroyed by fire, communicated to it by a spark which had issued from an engine belonging to the defendants, passing by the field where the stack was located upon the Great Western Railway. Plea, Not Guilty. The facts stated were, that the defendants were the railway company, incorporated by the 5 & 6 W. 4, c. cvii., and that their railway extends along the extremity and immediately adjoining the plaintiff's field, (situated at Burnham, Bucks), at the south eastern extremity of which, within eleven yards of the rails of the railway, and close adjoining the fence rails, the stack in question was placed. The stack was ignited by sparks of fire, emitted from one of the defendants' engines, which passed along the railroad near the spot in question, on the afternoon of Tuesday, 16th April, 1839, and the whole was burned, together with a portion of the fence rails. The engines and boilers used on the railway are such as are usually employed on railways, and the engine from which the sparks flew, which set fire to the stack in question, was used at that time in the ordinary manner, and for the purposes authorized by the act of parliament. The question for the opinion of the Court was, whether this action could be maintained, and whether the defendants were liable to make compensation

to the plaintiff for the loss sustained by him; it being agreed that if the defendants were liable, a verdict should be entered for the plaintiff for 62l. 8s.; but if not, a nonsuit was to be entered.

Mr. Serjt. Channell, for the plaintiff, urged first, that the action was rightly conceived in case, upon the authority of various decisions.

Mr. Serjt. Bompas for the defendants, contended, that there was no proof of negligence, and that the plaintiff must be nonsuited. The engine was not shewn to be defective, but on the contrary, it was said to be in its ordinary condition. The real cause of the occurrence was the negligence of the plaintiff, who had placed the stack unnecessarily in a position of danger.

Per Curiam.—We cannot come to any decision upon this case, for there is evidence of negligence, however small, upon which the plaintiff is entitled to have the judgment of a jury. The very circumstance of igneous matter being thrown out of the engine, might form an ingredient of carelessness, which would disentitle the defendants to a nonsuit, and we do not think that this is a case on which we can be called upon to give an opinion. The action, therefore, must be tried before a jury.

Aldridge v. the Great Western Railway Company, M. T. 1841. C. P.

POLICE ACT, 10 GEO. 4, C. 44, S. 41.—ACTION AGAINST POLICE OFFICER.—COSTS.—SUGGESTION.—JUDGE'S NOTES.—CERTIFICATE.

Where it is sought to deprive a plaintiff of his costs, by reason of his not having obtained the certificate of the judge who tried the cause, of his approbation of the action and the verdict, under the provisions of the 10 Geo. 4, c. 44, s. 41, (the police act) it being suggested to be an action brought against the defendant, a police officer, for a thing done in pursuance of that statute, the Court will refer to the notes of the judge to see whether it is an action so brought.

Quære, whether such an object should be effected by a suggestion upon the record, or by motion to review the taxation of costs.

Semhle, that such a suggestion cannot be traversed.

This was an action of trespass for an assault and false imprisonment, brought against the defendant, a police officer, to which he pleaded "not guilty," omitting to add "by statute" in accordance with the R. G. T. T., 1 Vic. (Vide 9 Dowl. P. C. 896.) At the trial of the cause before *Coltman, J.*, the plaintiff gained a verdict, with 5l. damages, but did not obtain the certificate of the learned judge of his approbation of the action and the verdict, which would have been requisite under the 10 Geo. 4, c. 44, s. 41, supposing the action to have been brought for an act done in pursuance of that statute. The Master had, however, taxed the plaintiff his costs, as in an ordinary case. A rule nisi to review the taxation having been granted,

Mr. Serjt. *Bompas* and Mr. *Martin* shewed cause. They contended, first, that the only mode by which the plaintiff could be deprived of his costs was by entering a suggestion, and that without such a suggestion, there would be error on the record, judgment being given to the plaintiff for damages, without costs, citing *Bartlett v. Pentland*, 1 B. & Ad. 704. Lord *Tenterden* saying, that the object was that the truth of the fact suggested might be tried. [*Maule, J.*—That doctrine has been much doubted, and I believe there is no instance to be found of a traverse of a suggestion. *Erskine, J.*—The form of a suggestion is opposed to the possibility of its being traversed, for it is “because it is suggested, and proved, and manifestly appears.”]

Mr. *Humphrey* urged that the Court would refer to the judge's notes to decide the point, and would not try the question by the inconvenient method of affidavits, which, there was little doubt, would be contradictory. He cited on this point, *Oakes v. Albin*, 13 Price 794; and upon the question of entering a suggestion, *Fleming v. Davies*, 5 D. & Ry. 371; *Baildon v. Pitter*, 3 B. & Ald. 210; 1 Chitt. Rep. 636 (n); *Robinson v. Vickers*, 1 Chitt. Rep. 636.

Per Curiam.—The question, whether the action is brought for anything done in pursuance of the stat. 10 Geo. 4, c. 44, is the first which we have to determine; and we may look at the judge's notes to decide that point. If the action was not brought for anything done under that statute, the case will be of the ordinary character, and no certificate required. If, on the other hand, it is so brought, the certificate will be granted or refused, and then further questions may arise.

Rule accordingly.—*Bartholomew v. Carter*, M. T. 1841. C. P.

TRIAL BEFORE SHERIFF, UNDER 3 & 4 W. 4, c. 42, s. 17.—DETINUE.—FORM OF MOTION.—SHewing CAUSE.—WAIVER.

Where in an action of detinue the value of the chattel is stated to be 20*l.*, the cause is triable before the sheriff, under the writ of trial act.

Query, whether the defendant can, by consent, before the sheriff, waive an objection that the cause is not within the operation of that act.

Where an objection is intended to be raised, that a cause was not properly triable by the under-sheriff, the motion must be, to set aside the writ of trial, and not for a new trial.

On shewing cause against a rule nisi for a new trial in an action tried before the under-sheriff, the party shewing cause must be provided with an office copy, not only of the affidavits on which the rule has been obtained, but of the under-sheriff's notes also.

This was an action of detinue, to recover a boat, stated in the declaration to be of the value of 20*l.*; to which the defendant pleaded the general issue, and not possessed. The cause was tried before the under-sheriff, under a writ issued by a judge's order, by virtue of the provisions of the 3 & 4 W. 4, c. 42, s. 17.

Mr. Serjt. *Channell* moved for a rule nisi for a new trial, upon the ground of the improper reception of evidence at the trial; but this objection being overruled, proceeded to object that detinue was not an action within the operation of the writ of trial act. The object of an action of detinue was to recover the specific chattel. *Tort* was the gist of the action, and it could not be deemed to be brought, therefore, for a “debt or demand,” within the act, for the latter word must be taken to imply a demand in the nature of a debt.

Mr. Serjt. *Bompas* appeared to shew cause, but it was objected on the part of the defendant, that he was not provided with an office copy of the under-sheriff's notes. [*Tindal, C. J.*—A copy must be taken; the plaintiff may pay for it, as there is not a copy now ready, and waive the actual taking]. *Bompas* then objected that the form of the motion was erroneous. The rule was drawn up as for a new trial.

Mr. Serjt. *Channell* stated that the clerk had mistaken the indorsement on his brief, which was, “to set aside the writ of trial, and all proceedings.” [*Tindal, C. J.*—The proper form undoubtedly should have been to set aside the writ of trial: but as it is an error of the clerk in drawing up the rule, the objection is not available].

Bompas.—The objection now raised by the defendant, to the want of jurisdiction of the sheriff, had been waived by his consenting to the issuing of the writ of trial under the Judge's order. Secondly, detinue came within the meaning of the statute, where, as in the present case, the plaintiff's demand did not exceed 20*l.* in amount. *Price v. Morgan*, 2 M. & W. 53; *Allen v. Pink*, 4 M. & W. 140; 6 Dowl. P. C. 668, S. C.; were in point.

Channell, in support of the rule, relied upon *Jacquot v. Bourn*, 5 M. & W. 155; 7 Dowl. P. C. 331, S. C.; *Watson v. Abbott*, 2 Dowl. P. C. 215; 2 C. & M. 150; and *Gludstone v. Hewitt*, 1 C. & J. 565; as to the want of jurisdiction of the sheriff; and upon *Lawrence v. Wilcock*, 11 Ad. & El. 941; 8 Dowl. P. C. 681, S. C.; and *Wilson and Wife v. Thorpe*, 6 M. & W. 721, upon the objection taken by *Bompas* as to the consent of the defendant.

Tindal, C. J.—I feel no hesitation in saying, that as at present advised, I think that this case falls within the writ of trial act. The words of the 17th section of that statute are not limited to actions of debt only, but extend to demands substantially of that nature; and we know very well that detinue is an action on a contract, and comes within the class of actions called actions of contract, and not within that class called actions of tort. The writ is to recover the specific chattel, or the value thereof, which sounds rather in contract than in tort; and the very circumstance that debt and detinue may be joined in the same declaration (2 Saund. 1176), distinctly points to the same result. The old form of the writ in debt, was not only *debet* but *detinet*; but in actions by or against executors, they left out the *debet*, and inserted the *detinet* only. There-

fore, it seems to me, that as the sum at which the chattel in this case is valued is under 20*l*. and as it is virtually and substantially contract, and if not debt, as near to it as may be, I think that the action of detinue is within the statute. If the parties are dissatisfied with our opinion, they have a remedy in a Court of Error.

Coltman, J.—I agree that if this was error on the record, it could not be waived by the consent of the party; but that question does not arise here.

Erskine, J., and Maule, J., concurred.

Rule discharged.—*Walker v. Needham, M.T. 1841. C. P.*

MISCELLANEA.

THE OLD OFFICIAL LAW REPORTS.

"It is difficult to ascertain with accuracy the period at which the practice of reporting the decisions of our Courts of justice first had its commencement. It seems probable that it began in the reign of Edward I., although there are no reported cases of that King's reign to be found in the year-books. A few broken cases are indeed contained in Fitzherbert's Abridgment, "but," says Sir M. Hale, "we have no successive terms or years thereof, but only ancient manuscripts perchance, not running through the whole time of this King." (*Hist. of the C. L. p. 165.*) He adds that "they are very good but very brief." From the commencement of the reign of Edward II. to that of Henry VIII, the year-books are continued in a tolerably regular series. Many scattered cases also, which are not to be met with in the year-books, may be found in the Abridgment of Fitzherbert, who must have derived them from collections of reports which have now perished.

"Before the printing of the year-books, an acquaintance with reported decisions must necessarily have been very confined, a fact which seems to be proved by the mode of argument observed at the bar, during the early period of our law. 'The ancient order of argument by our sergeants and apprentices,' says Sir Edward Coke, 'at the bar is altogether altered. They never cited any book, case, or authority, in particular as *'it is holden in 40 Ed. 3.'* &c. but *'est tenuis ou agree in nre liures, ou est tenuis adjudge in termes,'* or such like, which order yet remains at moots at the bar in the Inner Temple to this day.' (*Preface to 10 Rep. xii. See also Selden's Dissertations on Fleta, p. 212 of the translation.*) Mr. Reeves does not appear to have been aware that this was the customary mode at that period of supporting by authorities an argument in Court, and has supposed that in the reign of Edward 3, there did not exist reports possessing sufficient authority to be cited in Court. 'There were certainly,' he observes, 'no reports of established and general credit; otherwise it is not easy to imagine why no adjudications are vouched for what is laid down as law in the year-books of that reign. (Edw. 3.) According to the form of

these reports everything is to be taken on the bare authority of the person pronouncing it.' (*Hist. of the Law, v. 3, p. 150.*)

"Great obscurity prevails with regard to the persons who reported the decisions which are to be found in the year books. The commonly received opinion is, that certain officers of the Court were employed for this purpose, an opinion sanctioned by C. B. Gilbert: 'William the Conqueror,' he observes, 'to make the Norman tongue current, ordained that the pleadings in the Courts of Justice should be in French, and afterwards they were entered on record by the prothonotary in Latin, that being a dead language and subject to no variation; the French continued till Hilary, 36 Ed. 3; then, by the statute 36 Edw. 3, c. 15, it was abolished, but the pleadings continued to be in Latin, but the prothonotaries being used to make notes in French, still continued the old way, it being a language much shorter and more expeditious to take notes; of these are composed the year-books.' (*Gilb. Hist. of the Common Pleas, p. 46.*) Sir William Blackstone gives a similar account, informing us that the reports 'were taken by the prothonotaries or chief scribes of the Court, at the expense of the Crown, and published annually, whence they are known under the denomination of the year-books.' (*Comment, v. i. p. 72.*) 'The most ancient compilations of this sort,' says Mr. Douglas, 'were the work of persons specially appointed for the purpose. In what particular manner they exercised their function, how far the Courts superintended, or the judges assisted or revised their labours, no where appears, and indeed every thing relating to them is involved in so much obscurity, that I believe their very names are unknown.' (*Pref. to Douglas's Rep. p. 2.*) This does not appear to be quite correct. In the preface to the first volume of the last edition of the year-book, (sometimes called Maynard's Edward 2,) it is stated that 'Mr. Selden, to whom knowledge of this kind was familiar, doth, out of a copy, which he used, give us the name of the compiler of this work, to wit, Richard de Winchedon, who lived in the times in which the cases here reported were adjudged. The passage in Selden, may be found in his dissertation annexed to Fleta, and is as follows:—"What we have related concerning the use of the Imperial Law, in the above age, is likewise confirmed by what occurs in the law annals of King Edward 2, most beautifully transcribed from the manuscript of Richard de Winchedon, who lived at that time, and was in all appearance the first compiler of them.' (*Dissertation, p. 211, of the translation.*) Again, in the year-books, at the end of one of the terms, we find the following passage, '*Icy finissent les Reports de M. Horewode.*' It appears also that in Dyer's time there were a number of manuscript reports extant, which, as Mr. Vaillant tells us, (*see his Preface to Dyer's Reports,*) were well known at that time by the names of Tanfield, Warberton, Harper, Turner, Randal, Alason, and Rhodes. It is probable that some

of these persons were the *Annalists*, or compilers of the year-books.

"With regard to the number of these official reporters they are supposed by Plowden to have been four, who received an annual stipend from the king. (*Preface to Plowden's Rep.* p. iv.)

"There is some doubt as to the period when the official reporters discontinued their labours. The cases in the year-books extend to the 28 Hen. 8; but Sir Edward Coke, in the preface to 3 Rep. says: 'to return again to those grave and learned reporters of the laws in former times, who (as I take it) about the end of the reign of K. Henry 7. ceased, between which, and the cases reported in the reign of Hen. 8, you may observe no small difference: so as about the end of the reign of Henry 7, it was thought by the sages of the law that at that time the reports of the law were sufficient &c.' Mr. Douglas places the discontinuance of official reports at the beginning of the reign of Henry 8, (*Preface to Rep.* p. iii.) and in the preface to 5 Mod. (p. vi.) we meet with the following remarks. 'After the first twelve years of the reign of Henry 8, this method was discontinued. It is true there are some cases from that time to the twenty-seventh year of Henry 8, which are bound up with the year-books; but Mr. Fleetwood tells us they are collected with so little judgment that he did not think them worthy to be placed in the tables which he made of those books, and therefore composed a table of them by itself.'

[From *Roscoe's Westminster Hall.*]

THE CHRISTIAN HIGH COURTS.

"It is the glory of the Christian constitution, that its Author and Head is the Spirit of Truth, essential Reason as well as absolute and incomprehensible Will. Like a just monarch, he refers even his own causes to the judgment of his high courts. He has his *King's Bench* in the reason, His Court of *Equity* in the conscience; that, the representative of His majesty and universal justice; this, the nearest to the King's heart, and the dispenser of his particular decrees. He has likewise his Court of *Common Pleas* in the understanding, his Court of *Exchequer* in the prudence. The laws are his laws: and though by signs and miracles he has mercifully condescended to interline here and there with his own hand the great statute-book, which he has dictated to his amanuensis, Nature; yet has he been graciously pleased to forbid our receiving as the King's mandates aught that is not stamped with the *Great Seal* of the conscience, and countersigned by reason."

Coleridge's Aids to Reflection.

CAUSE LISTS, 1842.

Queen's Bench.

NEW TRIALS

Remaining undetermined at the end of the Sittings after Michaelmas Term, 1841.

Easter Term, 1840.

Middlesex—Claridge v. Latrade
York—The Manchester and Leeds Railway Company v. Fawcett

Hilary Term, 1841.

Middlesex—Hellewell v. Dearman and another
De Villa v. Val Marino
London—Fuller v. Wilson
" Brooks and another v. Macleod
" Jackson and another v. Thompson
" Gibson and another, assignees, &c. v. Surrey Canal Company
" Milward v. Hibbert
" Moffatt and another v. Sidney
" The South Eastern Railway Company v. Rowe the younger

Easter Term, 1841.

Middlesex—Ewing v. Osbaldeston
" Egan v. The Guardians of the Poor of the Kensington Union
" Petherick v. English and others
" English v. Fairburn
" Ashmole v. Wainwright and another
" Vassiere v. Cowvan and another
London—Albon, trustee, &c. v. Hayman
" Sydney v. Belcher and another
Surrey—Robinson v. Turner
" Mason v. King, Esq.
Hertford—Doe d. Crawley, Esq. v. Williamson and others
" Osborn v. Kilpin
Kent—Allbusen and another v. Strange
Warwick—Cooper v. Blick and others
Glamorgan—Doe dem. of the Duke of Beaufort v. Gough
" E. Thomas v. B. Thomas
Chester—The Mayor, Aldermen and Burgesses of the Borough of Macclesfield v. Walker
" Doe on the dem. of the Mayor, Aldermen and Burgesses of the City of Chester v. Francis
Carnarvon—Roberts v. Jones
Denbigh—Williams, clerk v. Hughes and others
Monmouth—Morgan, Bart. v. Powell
" Grover v. Price
Hereford—Bridges, Bart. v. Lewis
Worcester—Doe d. Evans v. Page
Stafford—Blagg v. Appleby
Cornwall—Roscorla v. Thomas
" Collins v. Horrell the younger
" Wallis v. Frean and another
" Edmonds v. Same
Wilts—Ogilvie v. Dallimore
Devon—Atkinson v. Raleigh and others
" The Queen v. J. Ames and another
" Pinsent v. Knox
Somerset—Doe d. Parsley and others v. Day
" Laver v. Hawkins
" Doe d. Goodlands v. Franklin
Hants—Mant v. Collins and another
Cambridge—Barley v. Sandle and others

Bedford—Doe d. Crawley, Esq. v. Williamson and others
 Suffolk—Doe d. Pye v. Bramwhite
 „ Denny v. Clarke
 Norwich—Stannard v. Bush
 York—Doe d. Metcalfe of Ivelett v. Metcalfe of Thwaite
 „ King v. Proctor
 „ The Queen v. W. E. Scott and another
 Lancaster—Munn and others v. Negroponte
 „ Catterall v. Kenyon and wife
 Durham—Hedley v. Bainbridge

Trinity Term, 1841.

Middlesex—Coats & another v. Chaplin & another
 „ Jones v. Clarke
 London—Crotty v. Price and another
 „ Rowland v. Blakesley and others
 „ Green v. Steer
 „ Hey v. Wyche

Michaelmas Term, 1841.

Middlesex—Tribe v. Whicher
 „ Metcalfe v. Fowler
 „ Carter v. James
 „ Smythies v. Southall and another
 „ Gardner v. McMahon
 „ Thomas v. Reece
 London—Chapman, one of the public officers, &c. v. White and others
 „ Boucher v. Murray
 „ Hayward v. Heffer and another
 Churchill v. Bertrand
 York—Moor and another, churchwardens, &c. v. Cook the younger
 „ Same v. Cook the younger
 „ Thompson v. Mauleverer
 „ Carr v. Foster and others
 „ Jaques v. Mackie
 „ Doe dem. Robinson and others v. Hird and another
 Lancaster—Bateman and others v. Pinder
 „ Morris v. The Preston Railway Harbour Dock Company
 Cambridge—Doe v. Pope
 „ Doe d. Stobbing v. Crowden
 „ Peyton, clerk v. Watson
 Norfolk—Martins v. Upcher, Esq. and another
 Stafford—Bourne v. Alcock
 Oxford—Hardy v. Stone & another, administrators
 Monmouth—Bevan v. Gething and others
 Surrey—Doe d. Watton v. Penfold
 „ Lamb, executrix v. Gibbons
 „ Doe d. Levy v. Horne
 „ Hodgkinson, Gent. v. Wyatt
 „ Renno v. Bennett
 Doe d. Levy v. Alcock and others
 Sussex—Whittington v. Boxall and others
 „ Edwards v. Gilbert and others
 Essex—Dawson v. Dacre, clerk to trustees, &c.
 „ McIntosh v. New College
 Kent—Coates v. Hopkins
 Radnor—Lewis v. Meredith
 Glamorgan—The Queen v. The Mayor, Aldermen, and Burgesses of the Borough of Swansea
 Leicester—Goddard and another v. Ingram & ano.
 Bristol—Miles v. Bough
 „ Wolseley and another v. Cox
 „ Same v. Same
 Wilts—Williams v. Ford. (*In repluin*)
 Cornwall—Bache v. Martin
 Devon—Vicery v. Reed
 „ The Queen v. The Inhabitants of Challa-combé

SPECIAL PAPER.

HILARY TERM, 1842.

*Archbp. of York and others v. Trafford & others
 Howard v. Gossett and others
 Cooch and another v. Goodman
 Richards v. Dyke and another
 Chapman v. Beecham. (*In repluin*)
 Garton and another v. Robinson
 *Jones v. Downman
 Stanley and another v. Beattie
 *Spry v. Broomfield
 Spilsbury and another v. Clough and another
 Vaughan and ux. adminis. v. Morgan, admx.
 Pegg v. Miller
 Blumenthal trading, &c. v. Castellam and another
 Smith v. Clinch
 Taylor v. Rolfe and others
 Same v. Moore
 *Doe d. Earl of Egremont v. Hellinga
 *Same v. Forward
 Jackson v. Magee
 Warren v. Bushell
 Gibson v. Iveson and another
 Percival and others v. Allanson
 Burdekin and another, assignees, &c. v. W. Jones
 Ransford and others v. Bosanquet
 Williams v. Perkins and another
 Hunt and another, assignees, &c. v. Robins
 The Birmingham, Bristol and Thames Junction Railway Company v. White
 Timbrell v. Cooper
 The Scriveners' Company v. Brooking
 Tomsett v. Clifton and others
 *Ross v. Clifton and others
 McIntosh v. Hamilton, clerk
 Anderson and others v. Thornton
 Same v. Rees
 Minshaw v. Hill
 Purton v. Brooks
 Plume v. Hodson
 Templeton v. Chadwick
 Jones v. Corbett
 The Mayor, &c., Governors of St. Bartholomew's Hospital v. Flight
 Hellinga, clerk, &c. v. Pratt and another, exors.
 Codrington, Bart. v. Cudlewis
 Nathan v. Lloyd
 Townsend v. Wilkin
 Hellyer v. Cotterell, executrix, &c.
 Sprigge v. Shunn. (*In person*)
 Baynton v. Elliott
 The Cheltenham and Great Western Union Railway Company v. Daniel
 Stanley v. Hayes
 Wright v. Watts
 Clarke the younger v. Jennings
 Sutton v. Jabet

Common Pleas.

REMANET PAPER of Hilary Term, 5th Vict. 1842.

Enlarged Rules.

Bresler v. Jacobs—to 2d day
 In re Blakey and Balfour—to 3d day
 Watt, jun. v. Cobb—to 5th day
 Crosby v. Betts—ditto
 Collis v. Groom—to 7th day

New Trial of Easter Term, 1840.

Middlesex—Crane v. Price and others

* Special cases—the rest are demurrers.

New Trial of Michaelmas Term, 1840.

Cambridge—Ivatt v. Mann

New Trial of Hilary Term last.

London—Devaux v. HHI

New Trials of Easter Term last.

Middlesex—Goss and another, assignees v. Quistion

London—Perry v. Watts

„ Stewart v. Steele

New Trial of Trinity Term last.

London—Parkes v. Great Western Railway Company.

New Trials of Michaelmas Term last.

Middlesex—Hubert v. Turner and others

„ Gibson and another v. Brand

„ Same v. Same

„ Cassidy v. Kent

„ Learmouth v. Lamb.

London—Mc. Laughlin v. Pryor

„ Bell, public officer &c. v. Gardiner

„ Callendar v. Ditttrich

Herts—Gibson v. Muskett

Salop—Evans v. Pratt

Berks—Rham v. Harding

Devon—Clutterbuck v. Coffin

Liverpool—Branner, assignees v. Molyneux

Cur. Ad. Vult.

Bonni v. Stuart

Same v. Same

Shepherd v. Pybus

Doe (Parker) v. Thomas

Weld v. Ward, clerk

Shoobridge v. Same

Paddock v. Forrester

Same v. Same

Aylesbury Railway Company v. Mount

Collyer v. Stennett

Alexander and another v. Burchfield

DEMURRER PAPER

OF HILARY TERM, 1842.

Tuesday	11th Jan.	} <i>Motions in Arrest of Judgment.</i>
Wednesday	12th	
Thursday	13th	
Friday	14th	
Saturday	15th	
Monday	17th	
Tuesday	18th	
Wednesday	19th— <i>Special Arguments</i>	
	Horne v. Booth, Bart. and another	
	Belcher, assignee v. Capper and others	
	Bell, public officer, &c. v. Tuckett	
	Togman v. Hopkins and another	
	Cotton v. Walsh	
	Skinner, secretary, &c. v. Lambert	
	Wilkins v. Boutcher and another	
	Nison v. Kidman	
	Grimson v. Fell, clerk	
	Gledstanes v. Earl of Sandwich and another	
	Sturtevant v. Ford	
	Sanderson and others v. Coltman and another	
	Lloyd and others v. Same	
	Matthew v. Davies, administratrix	
	Bradbee v. Christ's Hospital	
	Same v. Same	
Thursday	20th Jan.	
Friday	21st— <i>Special Arguments</i>	
Saturday	22d	
Monday	24th— <i>Special Arguments</i>	
Tuesday	25th	

Wednesday 26th—*Special Arguments*

Thursday 27th

Friday 28th

Saturday 29th

Monday 31st—*End of Term*

Cytherequer.

PEREMPTORY PAPER

FOR MONDAY, THE 12TH JANUARY, 1842.

To be taken at the Sitting of the Court. *d*

Ricketts v. Nash

Paragreen and another v. Whitelock

Swinburne v. Taylor and another

Cooze v. Neumegen

White v. Edwards

Dunn v. Warlters

Jones and another v. Williams and others

SPECIAL PAPER.

REMANETS FROM MICHAELMAS TERM, 1841.

For Judgment.

Sorsbie and others v. Park

(*Heard 22d Nov. 1841.*)

Whitehead and others v. Anderson

(*Heard 27th Nov. 1841*)

Whitehead and others v. Walker

(*Heard 27th Nov. 1841*)

For Argument.

Bridge v. Bowen and another

NEW TRIAL PAPER

FOR HILARY TERM, 1842.

For Judgment.

Moved Easter Term, 1841.

Durham—Wallis v. Harrison

(*Heard 27th May, 1841*)

Moved Michaelmas Term, 1841.

Middlesex—Daly v. Thompson

(*Heard 12th Nov. 1841*)

London—Walker v. Roston (*Heard 18th Nov.*)

„ Pyson, administratrix, &c. v. Chambers

(*Heard 23d Nov.*)

„ Rodwell v. Phillips

(*Heard 23d Nov.*)

Lincoln—Holmes v. Poole

(*Heard 1st Dec.*)

Exeter—Fursdon, executrix, &c. v. Clogg

(*Heard 2d Dec.*)

York—Rawdon and another, assignees, &c. v.

Wentworth and another (*Heard 4th Dec.*)

For Argument.

Moved Michaelmas Term, 1841.

London—Gibbs v. Pike and another

„ Watling v. Dewey

„ Oliver and wife v. Osbane, executors,

&c. (on affidavits)

„ Nicholson and another v. Hood

„ Hott & another v. Maslin (on affidavits)

Newtown—Fauntleroy v. Jones

Chester—Doe v. Raynes

„ Hinchcliffe v. Armistead

York—Jewison v. Dyson

„ Russell and others, assignees, &c. v. Bell and

another

„ Glave v. Wentworth

Lancaster—Lane, assig., &c. v. Parkes & Davies.

(*On affidavits.*)

„ Doe d. Hughes v. Jones
 „ Hoyle v. Coupe
 Liverpool—Harris v. Birch
 „ Ockleston and others v. Roome
 „ Mitchener and another v. Richardson
 „ Walker & others v. Jackson & others
 „ Hardman and others v. Bellhouse
 „ Brooks and others v. Mitchell
 „ Johnson and others v. Macdonald
 Hertford—Reid v. Burton
 Chelmsford—Simmons v. Scott
 Surrey—Flint and another v. Walker
 „ Todd and another v. Emly and another
 Cardiff—Jones v. The Llanelly Railway and Dock
 Company. (*To increase damages to 200*l.**)
 „ Ditto ditto
 „ (*To arrest judgment for plaintiff*)
 „ Verity v. Williams and others
 „ Thomas v. Jones
 Carmarthen—Davies v. Waters and others
 Pembroke—Stratton v. Laws and others
 „ Phillips and another v. De Rutzen
 and ux.
Moved after the 4th day of Michaelmas Term, 1841.
 Middlesex—Smout v. Ilbery

COMMON LAW SITTINGS,

In and after Hilary Term, 1842.

Queen's Bench.

In Term.

MIDDLESEX.	LONDON.
Wednesday... Jan. 12	Saturday Jan. 29
Saturday.....15	
Friday.....28	

After Term.

Tuesday, Feb. 1st	Wednesday Feb. 2nd
	(To adjourn only)

The Court will sit at eleven o'clock in Term, in Middlesex; at twelve in London; and in both at half-past nine after Term.

Long causes will be postponed from the 12th and 15th of January to the 1st of February; and all other causes on the lists for the 12th and 15th of January, will be taken from day to day until they are tried.

Undefended causes only will be taken on the 28th of January.

Short defended as well as undefended causes entered for the sitting on January 29th, will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Causes standing over with judgment of the Term in Middlesex, will be taken on the 1st of February.

Common Pleas.

In Term.

MIDDLESEX.	LONDON.
Wednesday... Jan. 19	Friday..... Jan. 21
Wednesday.....26	Friday.....28

After Term.

MIDDLESEX.	LONDON.
Tuesday..... Feb. 1	Wednesday.... Feb. 2

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Wednesday the 2d February, in London, no causes will be tried, but the Court will adjourn to a future day.

THE EDITOR'S LETTER BOX.

Although we abridge the reports of cases as much as practicable, in order to make room for their earliest possible appearance, we are aware that occasionally it will be requisite to go into details; and we shall be glad to look at the short-hand writers' notes of the judgments referred to, in order to determine whether the cases are worthy of being treated more at large.

In the case stated at p. 144, *ante*, of an attorney who omitted to renew his certificate, on or before the 16th December, it should have been stated that a re-admission was necessary unless he renewed it before the 15th November, if on that day the year expired, during which he had no certificate.

We are informed that the case of *Green v. Murray*, reported p. 172, *ante*, was a special jury cause tried at Guildhall, on the 22nd December, and not a question before the Court of Queen's Bench at Westminster. We are glad to find that the grounds of the nonsuit are set forth accurately, both in respect of the arguments and the decision of Lord Denman. We are obliged for the note we have received.

The 6 Geo. 4, c. 41, s. 1, repeals all stamp duties on bills of sale, or mortgages of a ship; and we are not aware of any case limiting this repeal where there is a covenant to repay the mortgage money on a certain day.

Some cases have been sent us, which, though involving questions of law or practice, are too long to be inserted. We wish our correspondents would put their points concisely, and we might then find early space for them.

"An old subscriber" inquires, whether judgments and decrees of the Superior Courts of law in England, can be transferred to, and be made records of the corresponding Courts in Ireland, and *vice versa*.

On the question of *apprentice premium*, at p. 136, "*Juvenis*" refers to the 8 Anne, c. 9, s. 39, and the cases of *Rex v. Cadley*, 1 B. & A. 477; *Rex v. Yarmouth*, S. C. 379; Say. 109, S. P.; *Barter v. Faulam*, 1 Wils. 129.

In the List of Perpetual Commissioners at Manchester, stated in the Legal Almanac, the name of Mr. Thomas Potter is omitted.

In order to complete the reports of cases up to the present time, and make room for the Cause Lists, and to dispose of the arrears of correspondence, we have this week printed a double number.

The *Legal Almanac, Remembrancer, and Diary*, for 1842, just published, price 4*s.*, may also be had interleaved, affording room for attendances, &c. price 6*s.*

The Legal Observer.

SATURDAY, JANUARY 15, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LETTERS

FROM MR. AMBROSE HARCOURT, STUDENT AT LAW, TO MR. THOMAS PRINGLE, OF TRINITY HALL, CAMBRIDGE.

LETTER II.

Dear Pringle,

I CONTINUE hard at work at Barnaby's, studying the art of well pleading, and like it much. I spend all my time either here or there, except that I take a walk before dinner. I am quite satisfied, that if you wish to learn pleading you must give your whole attention, and not go knee-deep into the matter. I find the practice the dryest part of the business; and yet I see it is absolutely necessary to understand it before I can at all comprehend with clearness the subsequent parts of the suit; so to it I have gone ding-dong. I have got one thing in my favour at Barnaby's. We are only three of us: one a regular working man, and one a very idle one. The working man is fresh from an attorney's office, and intends to take that branch, and is tolerably well informed already as to process, and so on. His name is Dyer, and is a quiet pains-taking fellow. Well, I meet him every morning at Barnaby's at half-past nine o'clock, and we read a little Tidd to give us an appetite for the work of the day. I find I cannot stand much, but by little and little, I trust to master the great Titydes, for whom, I must say, I have a great veneration. In the course of the day I read a chapter, or portion of a chapter, on the same subject I have read in the morning, in a modern and very good book of practice by Mr. Lush; and I really feel an interest in the subject. About twelve, in strolls our friend the idle man, Brandon

by name, who tells us the news, reads the newspaper, copies a precedent, and fills up a money count, and, walking off at four, never again makes his appearance. He is no lawyer, certainly, but has the prettiest waistcoats in the world.

Thus I spend my day. I get up these dark mornings about seven, and am dressed in about an hour. By the bye, I continue my sponge bath in spite of the cold weather; then read about half an hour, chiefly refreshing myself on what I have done the preceding day. I breakfast at nine, not heavily, but still nature must be sustained. I am at Barnaby's, as I have told you, at half-past nine, and work away with Dyer at Tidd for an hour; and then our worthy master comes in with the business of the day. Dyer gets the heaviest things, which is all right; I get an easy declaration, or a common-place plea or two, and we generally have a little pleasant, cheerful chat; for I must say Barnaby is rather fond of gossip. We then do our best, and Barnaby almost always settles our drafts with us in his own room. This is the most useful part of the day. It is pleasant to see him take up the instructions, at once discard what is not necessary, ponder a little on some doubtful points, pulling down a book or two, and then weave into the pleading all that should be stated. He never strikes out or alters a word without telling you why, and his reasons are generally conclusive. Sometimes, in the kindest manner, he will ask you to draw the pleading over again, but he generally makes your first draft serve the purpose. If the pleading be in the smallest degree special, I always make a precedent of it after it is settled. This I find very useful indeed, and shall thus gradually collect a body of pleadings, the reasons and groundwork of which are all familiar to me.

P

It is indeed a great mistake, I am satisfied, to neglect the copying of precedents; the copying them alone without any practice, and without reading will do but little; but, thus accompanied, precedent copying is very useful; it makes us familiar I find, with legal phraseology, and modes of expression. I begin now to think, so far as legal documents are concerned, in the *lingua franca* of the Temple. Nothing habituates the mind so much to this, as the judicious copying of precedents. In sending you these remarks, I find myself involuntarily using Barnaby's language, and do not consider this as my advice, but his. After dinner, I generally return to his chambers, or read in my own. I here generally confine myself to law, and am now hard at work on Selwyn's *Nisi Prius*, of which there is a new edition (the 10th) just out, dedicated thus "*Alberto Principi Legum Angliæ Studio. Hoc opus plus quam xxx annorum laboribus ad decimam editionem perductum ipsius Permissu D.D. D. Gulielmus Selwyn;*" (so that the prince sets us a good example.) This is a book of well-established reputation, and forms a good relief to Tidd, and the practical labours of the day.

You asked me to send you a course of preparatory reading for a pleader. Barnaby recommends as follows; first, read Blackstone throughout. Then take the most modern edition, (this is important,) and work hard at Vol. 3. Then Stephens on Pleading, a good and useful book. You may then safely go to a pleader, and adopt the course I have laid down in this letter, with Tidd and Lush, and reading a good work on *Nisi Prius* Law and Evidence. After Selwyn, I shall take Roscoe. Phillips on Evidence we read together, you remember. Starkie, in three thick volumes, is more practical, but both are good. These works mastered, and accompanied by practice, will go far, Barnaby says, to make a fair pleader, and prepare him for the reports, where he will find the rules he has learnt applied to the actual business of life. He will be here slow to receive as gospel all that is contained in the arguments of counsel; but he will see from them the forms and manners in which such arguments are prepared. But it is the judgments only, I need hardly say, that are to be relied on, and even these depend a good deal on the character of a Judge; but this latter knowledge can only be acquired by degrees. There are two ways of reading the Reports. You may read backwards or forwards; that is, you may begin with the earlier Reports,

and then go on to the later, or *vice versâ*. Mr. Barnaby recommends the latter mode, as you thus more easily acquire the rules of law at present in force; but there are conflicting opinions as to this.

I have now shown you how I pass the day; I have only to add, that about eleven I go to bed, and am soon—where you are, perhaps, after reading this—asleep.

Your's truly,

AMBROSE HARCOURT.

Temple, Jan. 8th, 1842.

ESTOPPEL BY RECITALS.

RECITALS in a deed as to a particular fact, will operate by way of estoppel so far as the parties to the deed are concerned, but they will not have this operation so far as a general statement is concerned. *Shelley v. Wright*, Willes, 9; *Rees v. Lloyd*, Wightw. 123; *Holmes v. Ailsbie*, 1 Madd. 551. But as against third parties, recitals cannot be any evidence of the facts contained in them, unless possession has followed and accompanied the matters therein recited; in which case that enjoyment will be a strong circumstance to prove that the facts were actually as they are stated to be. *Per Lord Gifford*, M. R., *Fort v. Clarke*, 1 Russ. 601; see also *Prosser v. Watts*, 6 Madd. 59. So in a late case, where a distinct statement of a particular fact is made in the recital of a bond or other instrument under seal, and a contract is made with reference to that recital, it was held, as between the parties to that instrument, and in an action upon it, not competent to the parties bound to deny the recital; and a recital in an instrument not under seal, may be such as to be conclusive to the same extent. But a party to an instrument is not estopped in an action by another party, not founded on the deed and wholly collateral to it, to dispute the facts so admitted; but evidence of the circumstances under which such admission was made is receivable to shew that the admission was inconsiderately made, and is not entitled to weight as proof of the fact it is used to establish. Lord Coke says, however, speaking of estoppel, "neither doth a recital conclude, because it is no direct affirmation," Co. Litt. 352, b. But this is directly disregarded in the case to which we allude, as Mr. Baron Parke lays down the rules we have cited "notwithstanding what Lord Coke says on the matter of recital in Coke upon Littleton, 352, b." His Lordship went on to say, "a strong instance as to a recital in a deed is found in the case of *Lainson v. Tremere*,

1 Adol. & El. 662, where in a bond to secure the payment of rent under a lease stated, it was recited that the lease was at a rent of 170*l.*, and the defendant was estopped from pleading that it was 140*l.* only, and that such amount had been paid. So, where other *particular facts* are mentioned in a condition to a bond, as that the obligor and his wife should appear, the obligor cannot plead that he appeared himself, and deny that he is married, in an action on the bond, 1 Roll. Abr. 873. All the instances given in Com. Dig. Estoppel, A. 2, under the head Estoppel, by matter of writing (except one, which relates to a release) are cases of estoppel in actions on the instrument in which the admissions are contained. By his contract in the instrument itself, a party is assuredly bound, and must fulfil it. But there is no authority to shew that a party to an instrument would be estopped in an action by the other party not founded on the deed and wholly collateral to it, to dispute the facts so admitted, though the recitals would certainly be evidence; for instance, in another suit, though between the same parties, where a question should arise whether the plaintiff held at a rent of 170*l.* in the one case, or was married in the other case, it could not be held that the recitals in the bond were conclusive evidence of these facts. Still less would matter alleged in the instrument, wholly immaterial to the contract therein contained; as for instance, suppose an indenture or bond to contain an unnecessary description of one of the parties as assignee of a bankrupt, overseer of the poor, or as filling any other character, it could not be contended that such statement would be conclusive on the other party in any other proceeding between them." *Carpenter v. Buller*, 8 Mec. & Wels. 209.

JUDGMENTS, SO FAR AS THEY AFFECT REAL PROPERTY.

THE law of judgments, so far as they affect real and personal property, has been considerably altered by the recent statute of the 1 & 2 Vict. c. 110. The object of this statute, however, was not to repeal the old law, but to give the judgment creditor, who is able and willing to avail himself of the benefits of this act, more effectual remedies against the property of his debtor than he had before the statute; and inasmuch as recourse to the old law will still be necessary in a vast number of instances

in which the provisions of this statute will not affect purchasers, it is proposed to consider, in the *first* place, the law as it stands unaffected by the 1 & 2 Vict. c. 110; and *secondly*, the effect of judgments upon the lands of the judgment debtor, where the creditor is in a situation to avail himself of the provisions of the act.

At common law, the goods and chattels of the debtor, and the annual profits of his lands as they arose, were the only things which could be taken in execution in personal actions. 3 Co. 11. To provide a more extensive remedy the 13th of Edw. 1, st. 1, c. 18 (Westminster 2), enacted that when a debt was recovered or acknowledged, or damages awarded in the King's Courts, it should be in the election of the creditor to have a writ of *fiery facias*, or to have delivered to him all the chattels of the debtor (saving only his oxen and beasts of the plough) and the one half of his land, until the debt was levied upon a reasonable extent.

In pursuance of this statute a new writ of execution was framed, called a writ of *elegit*, and upon this writ the sheriff was to impanel a jury to make inquiry of all the goods and chattels of the debtor, and to appraise the same, and to make the same inquiry as to his real property, and upon such inquisition to deliver all the goods and chattels and a moiety of the lands to the creditor.

Under the term "*land*" in the statute, the general freehold property of the debtor which he held in severalty, coparcenary, or in common, and all rent-charges, impropriate tithes, and lands held in ancient demesne, were liable to be extended. If the property was in reversion, and was subject to a rent, the creditor was entitled to extend a moiety of the reversion and a moiety of the rent.

An estate in joint-tenancy was not extendible after the death of the joint-tenant, who acknowledged the judgment; and copyholds, not being expressly mentioned in the statute, could not be taken in execution upon an *elegit*. And the statute has been held not to apply to advowsons in gross, because they were incapable of division, and could yield no pecuniary fruit; nor to glebe land or the profits of a benefice, nor to rents seck.

Estates tail could not be extended so as to affect the issue in tail; and the wife's lands were only extendible during the coverture, or during the interest of the husband after his wife's death, as tenant by the curtesy.

Upon a writ of *elegit* the sheriff might either deliver a moiety of a term of years to the cognizee, as part of the lands and tenements of the debtor, or sell the whole term, as part of his personal estate. 3 Bac. Abr. 380; 8 Co. 171.

By means of this statute a judgment, when duly entered up, became a lien upon all the lands which the debtor had at the time, and upon all those which he subsequently acquired; and no subsequent act of the debtor's, not even an alienation for a valuable consideration without notice, could avoid it. 2 Cru. Dig. 49.

When a creditor obtains two judgments of different terms, he is entitled on the one judgment to extend one moiety of the debtor's lands, and on the other judgment, a moiety of that which remains after the first extent. *Huyt v. Cogran*, Cro. Eliz. 482. But a plaintiff obtaining two judgments of the same term, can, by suing out two *elegits* at the same time, take the entirety in execution. *Attorney General v. Andrew*, Hard. 23. And it has been decided that when two *elegits* are issued at the same time upon judgments signed in the same term, the sheriff may extend on each an entire moiety of the defendant's land, though the judgments are at the suit of different plaintiffs. 5 Bing. Rep. 327.

By a fiction of law the whole term is considered, for many purposes, as but one day; and therefore all judgments related to the first day of the term in which they had been given or acknowledged. To remedy the injury which resulted from this doctrine to purchasers, who were often, in consequence, affected by judgments obtained after their conveyances had been executed, it was enacted by the 14th and 15th sections of the Statute of Frauds, that any judge or officer of any of his Majesty's Courts at Westminster that should sign any judgments, should, at the signing of the same, without fee, set down the day of the month and year of his so doing, and that such judgments should be made to operate as against purchasers *bond fide* for valuable consideration, only from such time as they should be signed.

As between creditors, however, the old rule of relation still prevails; and if the judgments are of the same term, the date of both is referred to the first day of that term. *Robinson v. Tong*, 3 P. Wms. 398.

The 16th section of the Statute of Frauds enacts that no writ of *fiery facias* or other writ of execution shall bind the property of the *goods* of the person against

whom such writ of execution may be sued forth but from the time that such writ shall be delivered to the sheriff, undersheriff, or coroner to be executed, and that such time is to be indorsed upon the writ.

The term "*goods*" in this section, includes the leaseholds of the judgment debtor. In *Forth v. Duke of Norfolk*, 4 Madd. 506, Sir John Leach, V. C., observed, that a judgment is at law no lien upon a legal term, and when the interest of the debtor is legal, a judgment is no lien in equity. Notwithstanding this judgment, the debtor could well assign his legal term at his pleasure. *Burdon v. Kennedy*, 3 Atk. 739.

It has been a common practice to keep on foot long terms of years after the original purposes of their creation may have been satisfied, and on each sale of the inheritance to assign them to a trustee, for the purchaser's protection. By these means a purchaser might protect himself from judgments entered up after the creation of the term, provided he bought *without notice* of the subsisting incumbrances. As, however, a judgment creditor was not affected by an outstanding term which was created subsequently to his lien, and judgments entered up after the creation of the term were an immediate incumbrance upon the expectant reversion, it was important to ascertain that the term was sufficiently old in its creation, and had such a time to run as to afford the purchaser the protection he required; and it was also necessary to see that the term had not been so neglected as to afford a presumption that it had been previously surrendered. 3 Sug. V. & P. 25, sec. 3.

In consequence of the difficulty of obtaining execution against any portion of the property of the judgment debtor, of which he was merely the equitable owner, the 10th section of this statute empowers every sheriff, officer, &c. to make and deliver execution of all such lands, tenements, rectories, tithes, rents, and hereditaments, as any other person or persons should be seised or possessed of in trust for him against whom execution is so sued, like as if the said party against whom execution should be sued had been seised of such lands, &c. of such estate as they be seised in trust for him *at the time of the said execution sued*.

It has been decided that an equitable interest in a term of years is not within the statute. Thus, in *Scott v. Scholey*, 8 East, 467, Lord Ellenborough said, "The very silence of the Statute of Frauds,—which, while it expressly introduces a new provi-

sion in respect to lands and tenements held in trust for the person against whom an execution is sued, says nothing as to trusts of chattel interests,—affords a strong argument that those interests are meant to continue in the same situation and plight in respect of executions, in which both freehold and leasehold trust interests equally stood prior to the passing of the statute."

Neither could any trust estate be taken in execution under the statute, but such as the debtor had at the time of execution sued. Thus, in *Hunt v. Coles*, Com. Rep. 226, it was said that the words *at the time of the said execution sued*, refer to the seisin of the trustee; and therefore if the trustee had conveyed the lands before execution sued, though he was seised in trust for the defendant at the time of the judgment, the lands could not be taken in execution.

A judgment not being a lien on the legal estate of the trustee until the writ was lodged in the sheriff's office, a purchaser *without notice*, having equal equity with the judgment creditor, was able to protect himself by getting in the legal estate at any time before that period. 1 Sand. Us. 275.

If a person purchased an equitable estate with notice of subsisting judgments upon the property, the equity of the judgment creditor, under such circumstances, exceeded the purchaser's equity, and consequently no acquisition of the legal estate by the purchaser would protect him from such incumbrances. *Tunstall v. Trappes*, 3 Sim. 286.

And it has been decided, that the Statute of Frauds does not extend to equities of redemption, or to any equitable property in which other persons besides the judgment debtor have any interest. *Metcalf v. Scholey*, 2 New Rep. 461; *Doe v. Greenhill*, 4 Barn. & Ald. 684; *Harris v. Booker*, 12 Moore, 283.

In connection with this part of the subject, it is to be observed, that property will not be bound in the hands of a purchaser by judgments obtained against the vendor after he has entered into a binding contract for sale. In *Lodge v. Lyseley*, 4 Sim. 75, Sir L. Shadwell said, "It appears to me, that from the time H. A. S. entered into binding contracts to sell his estates to purchasers, he not having judgment against him at that time, the purchasers had a right to file a bill against him, and have the legal estate conveyed; and if he had subsequently confessed a judgment, that judgment never could have impeded the progress of the legal estate to them." *Finch v. Earl of Winchelsea*, 1 P. Wms. 282.

In such a case, however, the judgment would be a lien in equity upon the unpaid part of the purchase money, and therefore a purchaser, with notice of the lien, would act unsafely in paying over what remained in his hands to the vendor, without previously getting an authority for so doing from the judgment creditor. 3 Prest. Abstr. 329.

And in a case where a father conveyed real estates to trustees, upon trust to sell and repurchase annuities granted by his son, and pay the son's debts at their discretion, and subject thereto, upon trust for the father for life, with remainder to his son in fee; an annuitant, mentioned in a schedule to the deed, and stated to have entered up and docketed a judgment against the son, upon a warrant of attorney which accompanied his security, was held to have no lien by virtue of his judgment upon the trust estates in the hands of a purchaser: Sir John Leach, M. R., said, "The petitioner and the other scheduled judgment creditors had no legal lien upon the trust estates, but they had a possible equitable lien, depending upon a contingency. The trustees had a full authority to sell, and convert the realty into personalty. If any part had been unsold by the trustees, it would have remained land, and the judgment would have attached upon it; but it was all sold by the trustees and converted into personalty, and the contingency which would have entitled the judgment creditor never took effect." *Foster v. Blackstone*, 1 Myl. & K. 297; *Lodge v. Lyseley*, 4 Sim. 75.

[To be continued.]

PRACTICAL POINTS OF GENERAL INTEREST.

RESTRAINT OF TRADE.

We have from time to time brought together the cases relating to an important point of frequent occurrence, how far trade may be restrained, see 14 L. O. 106; and in 15 L. O. 211, we adverted to the important case of *Hitchcock v. Coker*, 1 N. & P. 796; 6 Ad. & E. 438; in which it was held, that a party can be restricted from exercising his business in a particular place for his life, notwithstanding the death of the other party with whom he covenants. In the subsequent case of *Leighton v. Wales*, 3 Mee. & W. 545; 17 L. O. 85, *Hitchcock v. Coker*, was fully supported. But a bond to restrain trade, *unlimited* in point of space, is void, however limited the time may be in which it is to be enforced. *Ward v.*

Byrne, 5 Mee. & W. 645; 20 L. O. 66. This last case was acted on in *Hinde v. Gray*, 1 Man. & Gr. 196; 1 Scott, N. R. 123. In the latest case on the subject, the plaintiff, a cow-keeper and milkman, agreed to keep and retain the defendant in his service for one month certain, and until the expiration of a *months' notice*, to be given by either party to the other of them in writing, of his or their intention to determine such contract and service; in consideration whereof the defendant agreed to serve the plaintiff, and that he would not, during the continuance of such service, nor within twenty-four calendar months after quitting or being discharged from the same, commence, carry on, or be concerned in any way whatsoever, either as servant or master, in the trade or business of a cow-keeper and milkman, within five miles of Northampton Square, under a certain penalty; and it was held, that this contract did not operate in restraint of trade to such a degree as to render it void. "The general policy of the law," said Mr. Justice *Maule*, "undoubtedly is, that trade shall be encouraged, and contracts or agreements having for their object the restraint of trade, shall be discouraged; though, if the question were *res integra*, I strongly incline to doubt whether the interests of commerce be really promoted by the prohibition of such contracts. Many persons who are well informed upon the subject, entertain an opinion that the public would be better served, if by permitting restrictions of this sort, encouragement were held out to individuals to embark large capitals in trade; and that it would be expedient to allow parties to enter into any description of contract for that purpose that they might find convenient. However, the law is well established that all contracts in general restraint of trade are illegal. But it is also a part of the law that such contracts are valid, provided the restraint they impose is limited. It is said, that when the limitation is only colourable, or unreasonable, it falls within the general rule, and not within the exception. In *Horner v. Graves*, 7 Bing. 735, the Court clearly saw that the limit was colourable, and the restraint unreasonable. But it certainly does not follow, that because the Court thus held the exclusion of the defendant from the exercise of the profession of a dentist within a distance of one hundred miles from York, to be not necessary for the fair protection of the plaintiff, we must, therefore hold, that the exclusion of the present defendant from the exercise of his business as a cow keeper within five

miles of Northampton Square, is also an exclusion that is larger than is warranted or necessary for the fair and legitimate protection of the plaintiff." *Procter v. Sargent*, 2 Scott, N. S. 289; 2 Man. & Gr. 20, S. C.

REFORM IN THE CHANCERY OFFICES.

AMONGST the reforms which should be effected in the Chancery Offices for the dispatch of business and the convenience of the practitioners, are the following:—

1. The Offices should be *concentrated*, or brought as near to each other as practicable. They are now scattered in various parts. Taking them in the order of the proceedings in a suit, the solicitor has to file his bill in one place, and issue a *subpœna* in another; an appearance must be entered at one office, and the answer sworn at another; and then the answer must be fetched away by the clerk in court, and filed: so an affidavit must be sworn at one office, and filed at another.

Now if the Six Clerks' Office were converted into a Chancery Record Office, it would be very convenient to have *subpœnas* issued, and affidavits sworn and filed at the same place. The present Six Clerk's Office is large enough, and might easily be adapted for these purposes.

Ultimately, all the other offices should be consolidated in one building: the Masters and the Examiners, with the Registrars and Accountant General.

2. As to the *Hours of Attendance*:—There can be no good reason why all the Chancery Offices should not open and close at the same time, as they do in the Common Law Courts. At present the following offices are opened at 10, and close at 4.

The Affidavit Office.

The Examiners' Office.

The Masters' Office.

The Public Office.

The Subpœna Office.

These hours seem to be reasonable and proper. But the following offices close at 2 o'clock:—

The Accountant General's Office.

The Registrars' Office.

The Report Office.

It is said that these offices re-open in the evening; but from the change in the habit of transacting business, the attendance in the evening is useless.

3. Then as to the *Holidays*, it is evident that there should be some uniform regula-

tion. Some of the offices keep many, and some comparatively a few, holidays. One great mischief is, that the holidays continue until just the commencement of term, so that information cannot be procured, and where appointments are to be made with the Masters or Registrars, the first few days after the opening of the offices are absolutely lost to the practitioner. This has the effect of prolonging the vacation to the offices. There should be reasonable holidays at certain seasons of the year, but almost all the "red-letter" days, which have been long abolished in the Common Law Offices, should not be continued in Chancery.

POINTS OF LAW BY QUESTION AND ANSWER.

WHAT COVENANTS RUN WITH THE LAND.

[See p. 184, *ante*.]

1. The provisional assignee of the Insolvent Court, under 1 G. 4, c. 119, s. 7, assigned the estate of an insolvent to an assignee, who assented to such assignment, and acted under it as tenant of premises which the insolvent held as lessee for years after the death of such last-mentioned assignee: it was held, that his executor was liable to the lessor for breaches of covenant in the lease subsequent to the testator's death, it not appearing that the Insolvent Court had appointed fresh assignees. *Abersrombie v. Hickman*, 8 Ad. & El. 683.
2. An assignee taking from a lessee leasehold premises by indenture, indorsed on the lease "subject to the rent reserved in the lease," is liable in covenant to the lessee for rent which the lessee has been called on by the lessor to pay after the assignee has assigned over. *Steward v. Wolceridge*, 9 Bing. 60; 2 Moo. & Sc. 75.
3. In an indenture of lease, the lessee covenanted with the lessor, his heirs and assigns, to indemnify the overseers for the time being of the parish in which the premises demised were situate, from all costs and charges, by reason of the lessee's taking an apprentice or servant who should thereby gain a settlement within, or become chargeable to the parish: this was held to be a valid covenant, although it was objected that it was unreasonable, in restraint of trade, and contrary to the policy of the poor laws; and it was also held, that the action was well brought by the executors of the lessor, as the covenant was an express covenant with him personally, and did not run with the land. *Walsh v. Fussell*, 3 Moo. & P. 457; 6 Bing. 163.
4. The lessee of a public house covenanted for himself, his executors and assigns, with his lessors, who were brewers, to take all his beer of them or their successors in trade, and the lessors sold their trade and the public house with other premises, to third persons, who removed the plant, &c., to a distance of two miles, and there carried on the business of brewers: it was held, the trade of lessors was thereby determined, and that their assignee could not take advantage of the covenant on the lessee purchasing beer from another brewer. *Doe d. Calvert v. Reid*, 10 B. & C. 849.
5. A lessee, by deed poll, assigned his interest in demised premises to A., subject to the payment of the rent and performance of the covenants contained in the lease, and damages were recovered by the lessor against the lessee for breaches of covenant by A. during his possession: it was held, that the lessee might maintain action in case founded on tort, against A. for having neglected to perform the covenants. *Burnett v. Lynch*, 5 B. & C. 589; 3 D. & R. 368.
6. A covenant to insure against fire, premises situated within the weekly bills of mortality, mentioned in 14 G. 3, c. 78, is a covenant that runs with the land. *Vernon v. Smith*, 5 B. & Ald. 1.
7. On a covenant by the lessor to supply the demised premises (which were two houses) with a sufficient quantity of good water, at a rate therein mentioned for each house: it was held, that such covenant runs with the land, for breach of which the assignee of the lessee may maintain an action against the reversioner. *Jourdain v. Wilson*, 4 B. & Ald. 266.
8. The assignee of an assignee of a lessee of a term for years, may maintain an action upon a covenant for quiet enjoyment, entered into by the lessee with the first assignee and his assigns, upon the assignment of the term to him. *Lewis v. Campbell*, 8 Taunt. 715.
9. If an assignee convert the lands assigned to him into pleasure grounds, and erect buildings on them, he cannot recover the value of the improvements in an action upon a covenant for quiet enjoyment, unless he state the special damage in his declaration specifically. *Quære*, whether if so stated, he could recover. *Lewis v. Campbell*, 8 Taunt. 715; 3 Moore, 35; 3 B. & Ald. 392.
10. An action of covenant will lie by the assignee of the reversion of part of demised premises against the lessee for not repairing. *Tyngham v. Pickard*, 2 B. & Ald. 105.
11. When a party takes an assignment of lease by way of mortgage, as a security for money lent, the whole interest passes to him, and he becomes liable on the covenant for payment of rent, though he has never occupied, or become possessed. *Williams v. Bosanquet*, 1 Brod. & B. 238; 3 Moore, 500.
12. In an action by the lessor against the assignee of the lessee, on a covenant by the lessee for himself, his executors, and administrators, to pay to the lessor the amount of fruit trees, &c., to be planted by the lessee according to an appraisement to be made by two persons, one to be chosen by each of the parties, the declaration alledged

for breach, that the defendant refused to name a person to make the appraisement. On demurrer, it was held, that the covenant did not run with the land, and that the assignee was not bound. *Grey v. Cuthbertson*, 4 Doug. 351; 2 Chitty, 482.

13. The assignee of a lease for years, who has assigned over, is discharged from the covenant to pay rent, before the entry of his assignee. *Falker v. Reeve*, 3 Doug. 19.

14. A landlord cannot maintain an action of covenant for rent, against an under-tenant. *Holford v. Hatch*, 1 Doug. 183.

15. A lessee of tithes covenanted for him and his assigns, that he would not let any of the farmers of the parish have any part of the tithes. This covenant was held to run with the tithes, and bind the assignee. *Bulley v. Wells*, 3 Wils. 25.

THE VACANT JUDGESHIP.

It appears that Mr. Justice *Bosanquet*, on account of his continued illness, has resigned his seat on the Common Pleas Bench, which he worthily occupied from Hilary Term, 1830. He was called to the Bar in May, 1800, and took the degree of Serjeant at Law in Michaelmas Term, 1814. Among the names mentioned as likely to fill the vacant seat, are Mr. Serjeant Goulburn, the Honourable Mr. Law, and Mr. Serjeant Merewether.

NEW QUEEN'S COUNSEL, Hilary Term, 1842.

EQUITY BAR.

	<i>Called to the Bar.</i>
Edward Wilbraham, Esq.	8 Feb. 1810.
Wilkinson Mathews, Esq.	23 May, 1810.
John Herbert Koe, Esq.	22 Nov. 1810.
John Godfrey Teed, Esq.	22 May, 1816.
Wm. Loftus Lowndes, Esq.	6 Feb. 1818.
Thomas Purvis, Esq.	22 April, 1818.
John Walker, Esq.	23 Nov. 1819.
Kenyon Stevens Parker Esq.	27 Nov. 1819.
James Russell, Esq.	21 June, 1822.
Tho. Oliver Anderdon, Esq.	21 June, 1822.
R. Prioleau Roupell, Esq.	24 June, 1822.
Loftus Tottenham Wigram, Esq.	25 Nov. 1828.

Mr. Koe and Mr. Roupell have elected to practise before the Lord Chancellor and the Vice Chancellor of England; Mr. Russell before the Lord Chancellor and Vice Chancellor Bruce; and Mr. Teed before the Lord Chancellor and Vice Chancellor Wigram. The other gentlemen have not yet selected their Courts, so far as we have been able to learn; but we trust that by the end of the term, the arrangement will be complete. The practice now introduced of forming *separate Bars* is of great importance, and will, we trust, be followed out in all the Courts of Law and Equity.

RE-ADMISSION OF ATTORNEYS, on the last day of Hilary Term, 1842.

QUEEN'S BENCH.

Barrett, John, Bingley.
 Champ, George Edward, 8, Wellington Street, Blackfriar's Road; 39, Elizabeth Street, Hackney; and 45, Fetter Lane.
 Carter, Joseph, 4, Darlington Place, Southwark Bridge Road.
 Fortune, Thomas, Bath.
 Hallows, William, 52, Gloucester Street.
 Hewson, Andrew, Gosport.
 Harwar, Charles, Congleton; and Lees.
 Howarth, John, Manchester.

Keene, Talbot William, Leicester.
 Morgan, Charles Clayton, Great Hucklow.
 Milburn, George, 5, Sussex Place, Kensington New Town.
 Meteyard, William Pearson, 15, Gurnault Pl.: 18, Clarendon Street; and Gray's Inn Road.
 Pattenson, Henry Rees, 37, Manchester Street.
 Parker, Richard, Dover.
 Routledge, Robert, Henry Street, Pentonville.
 Spurling, Henry, Thorp-on-le-Soken.
 Walker, John, Axbridge; and Cheddar.

Added to List pursuant to Judges' Order and Direction.

Answorth, Henry Warne, Colchester Terrace, Old Brompton; and Regent St., Chelsea.
 Briggs, George, Gateshead, Durham.
 Clive, Joseph, 46, Great Russell Street; Debtors' Prison, London; and Ironmonger St.

Cadney, John William, Halifax.
 Smith, Walter, Bow Common.
 Taylor, John Sparrow, Shelton Potteries.
 Wagner, Thomas Jepson, Abingdon, Berks.
 Wheeler, Thomas, Ulverstone.

ATTORNEYS TO BE ADMITTED on the last day of Hilary Term, pursuant to Judge's Orders.

QUEEN'S BENCH.

Clerks' Name and Residence.

Colman, George Augustus, 10, Pelham Crescent, Brompton.
 Grant, James, 29, Oxenden Street.
 Rees, Isaac Davies, 11, Fitzroy Square, Grafton Street; and White Sun Court, Cornhill.
 Symes, John David, 66, Goswell Road.

To whom articulated, assigned, &c.

Park, Nelson, Essex Street.
 Patrick Gordon, Symond's Inn.
 John T. Jenkyn, Swansea.
 George Tanner, Crediton.

SUPERIOR COURTS.

Queen's Bench.

[Before the four Judges.]

MANDAMUS.—POST OFFICE.

This Court will not grant a mandamus to compel a man to do an act in futuro.

Therefore, though the 2 & 3 Vict. c. 41, (Scotch Bankrupt Act) enacts, that in cases of bankruptcy, the Scotch Courts may make an order "that for a period not exceeding three months from the date of the order, all letters addressed to the bankrupt shall be delivered by the Postmaster General" to the factor or assignee of the bankrupt's estate, and though such an order had been made and served on the Postmaster General, and he had refused to obey it, this Court, on the ground that it was an act to be done at a future time, refused to interfere by mandamus.

Mr. Dandaz applied for a *mandamus* to be directed to the Postmaster General, commanding him to deliver to Mr. Hall, all letters which might pass through the Post Office directed to Arthur Strahan & Co. He founded his motion on affidavits which set forth that several sequestrations had issued in Scotland against different persons in trade, among whom were persons who had carried on business in London, under the firm of Arthur Strahan & Co. Under the 2 & 3 Vict. c. 41, s. 49, the act relating to bankrupts' estates in Scotland, the creditors had appointed, and the sheriff had confirmed the election of Mr. Hall, as interim factor to the estate of Strahan & Co. Interim factor in Scotland was a person who exercised their duties similar to those exercised by assignees of bankrupts in England; and the section just referred to declared that an act and warrant in the form therein given should be issued, which being properly certified, should be received within England, Ireland, and her Majesty's other dominions, as evidence of the title, and should entitle the trustee or interim factor to recover any debt due to the bankrupts, and to maintain actions in the same way as the bankrupt might have done if his estate had not been sequestrated. The duties and rights of an interim factor were fully stated in the statute, and among other things, the 97th section declared "that the lord ordinary or sheriff, on cause shewn, may order that for a period not exceeding three months from the date of the order, all letters addressed to the bankrupt shall be delivered by the Postmaster General, or the officers acting under him, to the interim factor or trustee, to be opened in the presence of the sheriff, after written notice to the bankrupt to attend, if within Scotland, and in case the letters shall relate in whole or in part to the estate, they shall be placed in such custody as

the sheriff may direct, and the lord ordinary or sheriff may, on cause shewn, renew such order for a like period, as long as shall be necessary." It became necessary for the interim factor to obtain certain letters expected from New South Wales for the bankrupt, and under this section, a copy of the appointment of the interim factor being inclosed, a written demand for the delivery of the letters to him, was made by his attorney on the Postmaster General, and the following note was received from the secretary to that officer in answer to the application:—"8th January 1842. Sir, I have submitted to the Postmaster General, your communication of the 5th instant, with the inclosure, requesting that letters addressed to Arthur Strahan & Co., may be delivered to Mr. Hall, and I am directed to acquaint you that the Postmaster General cannot comply with your wishes." The interim factor, under these circumstances, had no course to pursue but to make the present application to enforce, by the authority of this Court, obedience to the provisions of a statute, which there was no other mode of enforcing. [Lord Denman, C. J.—Is there any precedent for the issuing of a *mandamus* to direct a man to do something in futuro? It is plain that the Postmaster General cannot now do what is required, for no letters are stated to have arrived.] The statute, by its very terms, casts upon the Postmaster General such a duty, and if he did not perform it, this Court will interfere to compel him to do so. There was a similar practice in the Post Office here, stated and recognised in *Meirelles v. Banning*,^a to deliver to the assignees of bankrupts, letters addressed to the bankrupts themselves; and in the present instance, that practice was adopted and enforced under the directions of the legislature. [Mr. Justice Patteson.—But there the letters were actually in the office. That is not so here. Lord Denman, C. J.—There is no case of this Court telling a man by *mandamus* to do an act in futuro. Mr. Justice Wightman.—Here if the *mandamus* issued, the Postmaster General could not obey till letters had actually arrived.]

Per Cur.—This application is a perfect novelty. If there should be found any case in which a man has been compelled by *mandamus* to do a future act, the Court will consider it. Otherwise this application must be considered to be refused.^b

Ex parte Hall, in re Arthur Strahan's Bankruptcy, H. T. 1842. Q. B. F. J.

^a 2 Barn. & Ad. 909.

^b It is the opinion of the Bar, we understand, that a *mandamus* should be issued in this case: the statute evidently contemplating and describing a future act. Ed.

WITNESS.—INCOMPETENCY.

It seems that where a party has been convicted and sentenced, and has suffered the punishment on a charge of subornation of perjury; he cannot afterwards be allowed to make an affidavit on behalf of another person, and that if an affidavit made by him be put on the files of the Court, it will be ordered to be taken off.

In this case Mr. Allen had obtained a rule against an attorney, to answer certain matters alleged against him. The attorney filed affidavits in answer, one of which was sworn by A. B.

Mr. Warren moved to take A. B.'s affidavit off the file, on the ground that he had been indicted, tried, convicted and sentenced, for having suborned one C. D. &c. to appear and personate a third person in the Ecclesiastical Court; and to swear to false evidence there. [Lord Denman, C. J.—Was this false evidence that which would constitute perjury at common law? for there are some matters which may be sworn to in the Ecclesiastical Court, which would not subject the parties swearing to them to the penalties of perjury at common law.] The indictment appeared by the record to have been brought under the 2 G. 2, c. 25, and the offence must, therefore, be presumed to have been one, in respect of which the punishments awarded by that statute could be inflicted. The 9 G. 4, c. 32, s. 4, was passed to restore capacity, as witnesses to all persons who had been indicted, convicted, and suffered punishment in certain enumerated cases, but from them the cases of perjury and subornation of perjury were distinctly excepted. And Mr. Starkie, in the last edition of his work on Evidence, shewed how the law was carried out. Under the title "Affidavit," he says, that a "judgment for an infamous crime will not prevent the party from making an affidavit in his own defence, but the rule is confined to cases of defence, and he cannot be heard as a complainant." *A fortiori*, therefore, he could not be heard on behalf of a third person.

Per. Cur.—There may be a rule nisi.

Rule accordingly.—*In re James Allen*, H. T., 1842. Q. B. F. J.

Queen's Bench Practice Court.

DISTINGUAS.—AVOIDING SERVICE.

The usual number of calls and appointments having been made in order to obtain a distinguas to compel appearance, the Court will grant that writ, if it appears that at the time the servant of the defendant denies his master to be in town, the de-

fendant is in town, and in the neighbourhood, making arrangements as to his property.

A. Dowling moved for a *distinguas* for the purpose of compelling appearance. The affidavit on which he applied, shewed that three calls had been made upon the defendant, the two latter calls being pursuant to appointment. The copy of the summons was left at the last call. On each occasion when the application was made, the defendant's servant stated that his master was out of town. It had, however, been ascertained that the master was in town, and in the immediate neighbourhood, where he had been occupied in making arrangements with respect to certain property belonging to him. It was submitted that as the object of the present application was to compel an appearance, sufficient appeared to shew that the defendant was keeping out of the way to avoid service.

Williams, J., granted the writ.

Rule granted.—*Hodgson v. Count D'Orsey*, H. T. 1842. Q. B. P. G.

JUDGMENT AS IN CASE OF A NONSUIT.—PEREMPTORY UNDERTAKING.—MATERIAL WITNESS.

A peremptory undertaking may be enlarged, where it appears, that since it was given, a material and necessary witness has been convicted of felony, and will not be discharged from custody previous to the time at which it was proposed to try.

A. Dowling moved for a rule to shew cause why the peremptory undertaking given by the plaintiff in this case should not be enlarged until after the 25th of April next, on the ground that a material witness could not be procured by the plaintiff, until after that date. It was an action to recover a sum less than 20*l.*, and a writ of trial had been procured for the purpose of disposing of it before the sheriff. The defendant not having proceeded duly to trial, a rule for judgment as in case of a nonsuit was obtained by the defendant. This rule was afterwards discharged on a peremptory undertaking to proceed to trial within a limited time after disposing of the rule. After the rule had been so disposed of, a witness who was material in support of the plaintiff's case was indicted at the last October sessions for felony, and sentenced to six months' imprisonment. That period would not elapse until the 25th of next April. Till then, the witness would not be competent, and therefore the present application was made to enlarge the peremptory undertaking in question until after that date.

Williams, J., granted a rule to shew cause for that purpose.

Rule nisi granted.—*Anonymous*, H. T. 1842. Q. B. P. G.

*Judgments.**Before THE LORD CHANCELLOR.*

Woodcock v. Renneck, *appeal*
 Mitford v. Reynolds, *ditto*
 Swan v. Bolton, *cause*
 Blundell v. Gladstone, *appeal*
 Allen v. Macpherson, *ditto*
Before V. C. WIGRAM.
 Salkeld v. Phillipps
Before V. C. OF ENGLAND.
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Pleas and Demurrers.
 V. C. Wigram, Trotter v. Durham
 Railway Company, *demurrer*.
 V. C. Bruce, Wilkins v. Bocknell,
 2 *debars*.
Re-hearings and Appeals.
 Addie v. Campbell, *appl.*
 S. O. { Att. General v. Wimborne
 School, 2 *appeals*
 Kay v. Holder, *ditto*
 Eretta v. Hall, *ditto*
 Abated—Knight v. Frampton, *do*.
 Attor. Gen. v. Earl of Stamford,
 2 *causes*, re-hearing part heard
 { Mitford v. Reynold, *cause*
 Peyton v. Hughes, re-hear.
 S. O. { Att. Gen. v. Southgate
 Ditto v. Milner, *appeal*
 Bayden v. Watson, *ex. & fur. dirs.*
 part heard
 Attorney Gen. v. Kingeton, *dem.*
 (from Exchequer)
 Ward v. Alager—Ward v. Ward,
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 Trelawny v. Roberts, *appeal*
 Tritchley v. Williamson, *dile*
 Scott v. Milne, *ditto*
 Pinnock v. Hyde, *ditto*
 Taylor v. Rundell—Pearse v.
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LORD CHANCELLOR.**CAUSES,**

St. John's College, Oxford, v.
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 S. O. Playfair v. Birmingham
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 Ward v. Ponsfret, *fur. dirs. & petn.*
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 Abated—Webb v. Clarke
 Smith v. Mackie
 Booth v. Lightfoot
 Cole v. Hall
 { Heap v. Haworth, *exons.*
 { Ditto v. Ditto, *fur. dirs. and cs.*
 Owens v. Dickenson
 Grant v. Hutchinson
 Boys v. Trapp, 2 *causes*
 Bullivant v. Taylor, 2 *causes*, *fur.*
dirs. and costs
 Kirkwall v. Flight, *exceptions &*
lunatic petition—Ditto v. Ditto,
fur. dirs. and costs

Vice Chancellor of England.

CAUSES, FURTHER DIRECTIONS
 AND EXCEPTIONS.
 Butcher v. Jackson—Jackson
 v. Butcher
 Butcher v. Jackson, *by order*
 { Jones v. Jones, *fur. dirs. &*
costs
 S. O. { Luckes v. Frost, *fur. dirs.*
& costs
 Smith v. Pugh, *to amend*
 Abated—Hughes v. Rogers, *fur.*
dirs. & costs
 Abated—Jumpton v. Pitchers—
 Dawes v. Jumpton
 S. O. { Dangerfield v. Evans
 Bushell v. Hardley
 Potts v. Pinnegar
 Bruin v. Knott
 Abated—Irring v. Elliott
 Bingham v. Hallam, *fur. dirs.*
and costs
 Cormouls v. Mole
 Gedy v. Thorne, *fur. dirs. & costs*
 Jan. 29 Jeffreys v. Hughes—Ditto
 v. Holditch, *fur. dirs. and costs*
 Abated—Hare v. Cartridge, *fur.*
dirs. & costs
 S. O. Attorney Gen. v. Pratt, *at*
request of def't. Pratt & 3 others
 Hall v. Deacon, *fur. dirs. and cs.*
 Saxby v. Saxby, *fur. dirs. & petn.*
 Moses v. James
 Barber v. Hollington, *exceptions*
 Doo v. London and Croydon
 Railway Company
 Witherden v. Witherden
 Godden v. Crowhurst
 Atkins v. Hatton, *fur. dirs. & cs.*
 Brydges v. Bramhill
 Barlow v. Lord, *fur. dirs. and cs.*
 Lee v. Jones, *fur. dirs. and costs*
 Barrodale v. March—March v.
 Ditto, *Exchequer cause*
 S. O. Gething v. Vigurs
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 S. O. Cocks v. Edwards—Grif-
 fith v. Richards—Hawley v.
 Powell
 Abated—Lindsey v. Godmond
 Attorney General v. Field
 Lloyd v. Jones, *fur. dirs. & costs*
 Thorneycroft v. Crockett
 Breeze v. English
 Hunt v. Thackrah
 Henfrey v. Hermon
 Goode v. Morgan
 Allright v. Giles
 Ibbetson v. Selwin—Ibbetson v.
 Fenton
 Green v. Green
 Lee v. Hurton
 Richards v. Wood, *exceptions and*
further directions
 Morrell v. Owen, *fur. dirs. & costs*
 { Liddell v. Granger, *exceptions*
 { Ditto v. Ditto
 Williams v. Roberts
 Coore v. Lowndes
 Abated—Smith v. Farr
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 S. O. Graham v. Williams, *fur.*
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Doubeay v. Coghlan, *exons. & do.*
 Davis v. Id. Combermere, *ex. as.*
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 { Forbes v. Peacock
 { Ditto v. Ditto, *exons. by order*
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 Latour v. Holecombe
 Youde v. Jones
 { Campbell v. Campbell, *exons.*
 { Ditto v. Ditto, *fur. dirs. & costs*
 Cooper v. Emery, *exceptions*
 Price v. Harding, *fur. dirs. & cs.*
 Roberts v. Corporation of Car-
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 Fisher v. Great Western Railway
 Company
 Attorney Gen. v. Baines
 Birch v. Joy, *exons. 2 sets & petn.*
 Attorney General v. Cooper
 Bute v. Stuart, *exons.*
 Petty v. Briggs
 Burden v. Oldaker
 Seagar v. Smith
 Wright v. Taylor—Ditto v. Frith
 Hirst v. Bradley
 Goodricke v. Thaker
 Attorney-Gen. v. Mayor of Bri-
 stol, *after Hilary Term*
 Wade v. Russell
 Warne v. Greene
 Warden, &c. of Clun Hospital v.
 Earl Powis
 Barnano v. Vltter
 Fuller v. Woods
 Scott v. Rideout
 Sheppard v. Clutterbuck
 Sykes v. Gyles
 Cobley v. Wells
 Cozens v. Cozens
 Gibson v. Prosser
 Gaven v. Gaven
 White v. Husband
 Kenward v. Henty
 Robertson v. Great Western Rail-
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 Minor v. Minor
 Harrison v. Lane
 Colby v. Scotchmer
 Lord Muncaster v. Lady Mun-
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 Dixon v. Clarke
 White v. Hunt
 Lovell v. Yates
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dirs. & costs
 Talbot v. Andrews, *ditto*
 Mackintosh v. Henderson, *ditto &*
petition
 Roberts v. Corp'n. of Carnarvon
 Edwards v. Williams, *fr. dirs. & cs.*
 Hemingway v. Fernandez
 Thomas v. Jones, *fur. dirs. & cs.*
 Corney v. Tribe, *ditto*
 Parker v. Marchant, *ditto*
 Poyntz v. Holden
 E. Amhurst v. Duchess of Leeds
 Attorney General v. Mayor, &c.
 of Chesterfield

Ihler v. Davies and Balabridge
 Payne v. Bristol & Exeter Rail-
 way Company
 White v. Briggs
 Grant v. Edgar
 Morrice v. Langham, *fur. dirs.*
and costs
 Horloch v. Smith, *exons.*
 Jones v. Pugh, *ditto*
 Pritchard v. Kettelby, *fur. dirs.*
and costs
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 Maitland v. Bateman, *exons.*
 Sampayo v. Gould, *exons.*
 Evans v. James
 Peet v. Peet, *fur. dirs. and costs*

New Causes.

Ashley v. Hoskins
 Heywood v. Grazebrook
 Ward v. Arch—Ditto v. Ditto—
Ditto v. Tickle
 Morton v. Maule
 Teed v. Carruthers—Ditto v.
Kennedy
 Blythe v. Granville
 Douglas v. Douglas
 Thomas v. Williams
 Hancock v. Nicholson
 Dean v. Hall
 Greenway v. Bromfield
 Easton v. Catling
 Clough v. Trench
 Yeld v. Simpson
 Cave v. Cock
 M. A. Douglas v. Douglas
 Stevens v. Newberry
 Abbey v. Petch
 Boddington v. Seton
 Spooner v. Sandilands
 Wallace v. Nickson
 Meux v. Smith
 Davies v. Boulcott
 Strother v. Dutton
 Kynaston v. Jones
 Stiles v. Tuckey
 Boulton v. Strathmore
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Vice Chancellor Knight Burr.

S. O. Christison v. Mayor, &c. of
 Berwick, *exons. 2 sets from Ex-
 chequer*
 S. O. Mayor of London v. Combe,
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 S. O. Higgins v. Higgins
Abated—Moore v. Moore, *fur.*
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 Attorney General v. Brandreth
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S. O. Milbank v. Stevens
Abated—Griffiths v. Griffiths
 S. O. Cort v. Winder
 S. O. Bastin v. Bastin
 Aft. Tm. Clamp v. Clarke
 Aft. Tm. Bristow v. Woods, *fur.*
dirs. and costs
 S. O. Taylor v. Bailey, *at def't's*
request
 S. O. Cort v. Winder
 Oswald v. Landles
 S. O. Attorney Gen. v. Elcox
 S. O. Sloper v. Sloper
Abated—Stephens v. Williams
 Hickling v. Boyer
 Lade v. Trill—Trill v. Lade
 Watkins v. Briggs
 Samuel v. Gibbs
 Midgley v. Midgley
 Coppin v. Gray
 King v. Chuck
 Weston v. Peache
 Fry v. Wood
 Fanning v. Devereux
 Keene v. Birch, 2 causes, *fur. dirs.*
and pets.
 Hall v. Rawdon
 Chafey v. Serjeant
 Sillick v. Booth—Ditto v. Cor-
 bett, *fur. dirs. and costs*
 Scarborough v. Sherman
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 Attorney Gen. v. Milner
 Robertson v. Dean
 Edgar v. Fry
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 Alexander v. Foster, *exceptions*
 Powell v. Powell, *fur. dirs. & cs.*
Abated Pye v. Linwood, *ditto*
 Griffin v. Williams
 Bowmer v. Parkinson
 Ford v. Clough, *fur. dirs. & costs*
 Gurney v. Cosway, 2 causes, *ditto*
 Eades v. Harris
 Jenkins v. Cooke
 Sharman v. Heath—Howe v.
Ditto, fur. dirs. & costs
 Smith v. Baker, *exons. & fur. dirs.*
 Massey v. Day
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 narvon v. Evans
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 Langford v. Reeves
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 Compton v. Storey
 Fairfax v. Morrell
 Vickers v. Oliver
 Powell v. Woollam
 Russell v. Buchanan
 Cottingham v. Stapleton, *exons.*
 Watson v. Webb
 Trevor v. Trevor, *exons. 3 sets*
Abated Bird v. Blyth
 Farmer v. Farmer
 Genge v. Matthews
 Mason v. Frankling
 Scott v. Pascall
 Cragg v. Forde, 2 causes, *exons.*
 2 sets
 Burrige v. Row, *fur. dirs. & cs.*
 Carr v. Collins, *fur. dirs. & costs*
New Causes.
 Simonds v. Simonds
 Oliver v. Latham

Chapman v. Bridgewater and
 Taunton Navigation Co.
 Fowler v. Knollys
 Barker v. Wallis
 Wardle v. Claxton
 Hodgson v. Crozier
 Overt v. Patching
 Dinning v. Henderson
 Moorhouse v. Colvin

Vice Chancellor Stigram.

S. O. Lewis v. Adams, *Esch. cs.*
 E. T.—Earl of Egremont v. Young
Abated—Neesom v. Clarkson
Abated—Owen v. Williams
 Sharp v. Manson
 East India Co. v. Coopers' Co.
 Perkins v. Bradley, *part heard*
 29th Jan.—Ridley v. Lashmar
 Monk v. Earl Tankerville
 S. O. G. Lloyd v. Mason, *fur. dirs.*
& costs
 Heslop v. Bank of England, *ditto*
 Milne v. Bartlett, *ditto*
 Fredricks v. Wilkins, *ditto*
 Culley v. Culley
 Roach v. Peters, *fur. dirs. & costs*
 Moody (Pauper) v. Hebbard
 Gray v. Mumbray
 Williams v. Roberts
 Coulton v. Middleton, *fur. dirs. &*
equity reserved
 Williams v. Moore
 Williams v. Allen
 Vanderplank v. King
 Gardner v. Blane
 Buxton v. Simpson
 Greene v. Warne
 Appleby v. Duke
 Baylie v. Martin
 Hutchings v. Batson
 Wale v. Moores
 Mattalieu v. Miller
 Forsyth v. Chard, *fur. dirs. & cs.*
 Allen v. Cornfield
 Fitzpatrick v. Newton
 Cogger v. Wickes
 Egginton v. Burton
 Stocken v. Chuck
 Pullen v. Haverfield
 Cash v. Belsher
 Williams v. Ellis
 Wright v. Rutter
 Aspinall v. Andus
 Morgan v. Elstob
 Body v. Lefevre
 Hopsen v. Croome
 Parry v. Jebb
 Cooke v. Black
 Davies v. Thorne
 Middleditch v. Saunders
 Hodgson v. Lowther
 Wansey v. Towgood
 Christian v. Chambers, *fur. dirs*
and costs
 Eld v. Durant
 Stephenson v. Everett
 Barfoot v. Buckland
 Stiven v. Jenkins
 Dyson v. Morris
 Bultell v. Lord Abinger

Attorney General v. Mayor and Corporation of Newark
 Trevanion v. Sargoa
 Willetts v. Willetts
 Crawford v. Fisher
 Taylor v. Jardine
 Plunkett v. Lewis, *exons. & fur. dirs.*
 Hand v. Wrench
 Gill v. Rundle
 Johnson v. Child
 Rogers v. Ashcroft
 Tipping v. Power, *fur. dirs. & cs.*
 Baron Alvanley v. Edwards
 Clare v. Wood

Hetherington v. Henseltine
 Thomas v. Williams
 Sutton v. Torre
 Robinson v. Milner, *exceptions*
 Cole v. Stutely, *fur. dirs. & costs*
 Rawson v. Cheyne, *fur. dirs. & costs*
 Alderson v. Jones
 Schultes v. Ward
 Batty v. Heycock
 Barton v. Pyne, 2 causes, *exons. fur. dirs.*
 Duncan v. Snook
 Charnock v. Charnock
 Paul v. Yeatman

S. O. Protheroe v. Harrison, *fur. dirs. and costs*
 Arundale v. Bowyer
 Raikes v. Ward, *fur. dirs. & costs*
 S. O. Kimber v. Ensworth
 Langmead v. Lopes, *fur. dirs. and costs*
New Causes.
 Postlewaite v. Mounsey
 Lucy v. Barnes
 Sharpe v. Taylor
 S. O. Little v. Baker
 Short Hardouin v. Capel
 Pinkett v. Wright

Rolls.

	Pleas and Demurrers.	Causes.	Further Directions and Costs.	Further Directions and Exceptions.	Exceptions.	Total.
Standing in the printed Book for Hearing at the commencement of Michaelmas Term, 1841	4	107	39	5	11	166
Matters set down after the Printing of the Book for Michaelmas Term and up to the Close of the Sittings (1841)	2	66	24	1	6	99
Total	6	173	63	6	17	265
Heard and disposed of, or removed from the General Paper:—						
As Short Causes	0	23	6	0	0	28
In the Regular Paper	4	26	10	1	2	43
Struck out, as Abated, or Compromised, or for some other reason	1	24	11	0	1	37
Total	5	72	27	1	3	108
Balance undisposed of as above	1	101	36	5	14	157
Matters adjourned at the Request of Parties as their regular time for Hearing arrived	0	10	4	0	1	15
Total now for Hearing	1	111	40	5	15	172

Pleas and Demurrers.

1st day of Causes—Clarke v. Tipping, *demurrer*

Matters which, in regular turn, would have been heard on a former day; but which have been adjourned at the request of Parties till after the First Day of Causes in Hilary Term.

Suckermore v. Dimes—*adj.* to come on with supplemental cause

Millar v. Craig—*adj.* till after Term.

Cook v. Fryer—*adj.* for amendment.

Warwick v. Richardson—Clarke v. Sewell—*exceptions—adj.* to prepare a case

Western v. Williams—*further directions and costs—adj.* to Michaelmas Term

Wilson v. Mead—*adj.* to Michaelmas Term

Artis v. Artis—*adj.* to Easter Term

James v. James—*adj.* to Michaelmas Term

Hodge v. Rexworthy—Ditto v. Hodge, *further directions and costs, and petition part heard—adj.* to Michaelmas Term

Jackson v. Jackson—*adj.* to Michaelmas Term

Attorney General v. Corporation of Newcastle-upon Tyne—*adj.* to Easter Term

Rutter v. Marriott—Ditto v. Ebdon—*adj.* to Trinity Term

Aldridge v. Westbrook—Parsons v. Same—*further directions and costs—adj.* till last day of Term

Hemmingson v. Gylby—*adj.* to 1st day after Term
 Clunn v. Crofts—Crofts v. Davy—*further directions and costs, and supplemental suit*

First day of Term—Motions

Matters which, in regular turn, would have been heard on a former day; but which have been adjourned at request of Parties till the First day of Causes in Hilary Term.

Wentworth v. Williams, *part heard*

Langton v. Horton, *part heard*

Willats v. Bushley—Ditto v. Merceron, *part heard*

Relfe v. Nursey

Wright v. Maunder

Ashton v. Mc Dougall

Connell v. Connell

Hyde v. Dallaway

Leavens v. Edmondson—Ditto v. Limbert, 2 causes, *exceptions and further directions and costs*

Davies v. Fisher—Ditto v. West—Ditto v. Phillips, *further directions and costs*

Evans v. Harris

Welford v. Oliver—Ditto v. Stainthorpe

Lewis v. Davies, *exceptions*

Lumsden v. Morison

Lane v. Hardwicke

Attorney General v. Bayly

Shalcross v. Wright

- Towaley v. Deane
 Cotham v. West, *exceptions*
 Wyatt v. Sharratt—(April 19*)
 Webb v. Tayler—(April 19)
 Aldridge v. Westbrook—Parsons v. Ditto, *further directions and costs*—(May 1)
 Hemmingson v. Gylby—(May 25)
 Wade v. Hopkinson—(May 28)
Undisposed of Matters in the printed Book for last Term, whose turn for Hearing had not arrived at the close of last Sittings.
 Voss v. Luce—Ditto v. Hayne—set down May 31
 Story v. Tonge, *exceptions*—set down June 2
 Ellis v. Walmsley—Ditto v. Earl Grey, *further directions and costs at request of defendant Walmsley*—set down June 4
 Acey v. Simpson, *further directions and costs, and petition*
 Attorney General v. Walmsley—(June 28)—set down June 4
 Attorney General v. Heron—(June 28)—set down June 4
 Attorney General v. Vincent—(June 28)
 Philanthropic Society v. Kemp, *further directions and costs*—set down June 9
 Bowen v. Parker, *further directions and costs*—set down June 10
 Hereford v. Ravenhill, *further directions and costs*—set down June 10
 Beighington v. Grant—Ditto v. Beighington—Ditto v. Grant, *further directions and costs*—set down June 14
 Agabeg v. Hartwell—Colvin v. Ditto—Hartwell v. Colvin—(June 30)—set down June 15
 De la Garde v. Lempriere, *further directions and costs*, set down June 15
 Strickland v. Strickland—(July 5)—set down June 16
 Wood v. Pattison—(July 6)—set down June 17
 Attorney General v. Wilson, *further directions and costs*, set down June 18
 Falkner v. Matthews, *further directions and costs*—set down June 22
 Orenden v. Stephens—(July 8)—set down June 22
 Douglas v. Leake, set down June 22
 Stilwell v. Clarke—Ditto (pauper) v. Hawkins—(July 12)—set down June 25
 Attorney Gen. v. Chester (Saint John's Hospital)—(July 20)—set down July 1
 Wall v. Baker, *further directions and costs*—set down July 3
 Attorney General v. Gell, *exons. fur. dirs. and costs*—set down July 6
 Griffiths v. Evan, *further directions and costs*—set down July 10
 Johnson v. Hardy—set down July 12
 Hales v. Darell—Ditto v. Hales—Ditto v. Raphael—Gilbert v. Darell—Ditto v. Raphael, *further directions and costs, and exceptions*—set down July 23
 Coleman v. Jessop, *fur. dirs. and costs and petition*—set down July 26
 Ball v. Wivell, *further directions and costs*—set down July 26
 Attorney General v. Newbury—Ditto v. Birchall, *further directions and costs*—set down July 29
 Davies v. Peers, *further directions and costs*—set down August 4
 Thomason v. Moses, *further directions and costs*—set down August 6
 Chadwick v. Broadwood, *exceptions*—set down August 10
 Page v. Broom—Ditto v. Page—Ditto v. Harris—Ditto v. Edwards—Ditto v. Ganderton, *exceptions*—set down August 13
 Whittle v. Henning, *exceptions*—set down Aug. 14
 Fyler v. Fyler, *exceptions*
 Fyler v. Fyler, *exceptions*—set down August 18
 Walkins v. Stevens, 4 *causes*—Ditto v. Cornwell, 2 *causes*—Ditto v. Hawkins—Judson v. Ekins, *exceptions*—set down August 23
 Bridge v. Brown, *exceptions*—set down Sept. 4
 Bridge v. Brown, 2 *causes, further directions and costs and exceptions*—set down September 4
 Nicholson v. Wathen, *further directions and costs*—set down September 4
 Wakeman v. Wakeman—(November 3)
 Cottrell v. Gem—(November 3)
 Blackford v. Kirkpatrick—(November 3)
 Wilding v. Richards—(November 3)
 Wilding v. Eyton—(November 3)
 Attorney General v. Compton—(November 3)
 Benson v. Heathorn—(November 3)
 Dowell v. Dew—(November 4)
 Mana v. Mills—(November 4)
 Roades v. Rosser—(November 4)
 Clark v. Wormald—(November 4)
 Mynn v. Hart—(November 5)
 Pittom v. Howard—(November 5)
 Haddelsey v. Neville—(November 5)
 Shedden v. Idle—(November 5)
 Sicklemore v. Kingsford—(November 5)
 Padley v. Kidney—(November 6)
 West v. Price—(November 6)
 Leman v. Oxenham—(November 6)
 James v. Frearson—(November 6)
 Rutherford v. Mc. Cullum—(November 6)
 Stubbs v. Iveson—(November 8)
 Upjohn v. Penruddocke—(November 8)
 Daniel v. Harding—(November 8)
 Lee v. Lee—(November 8)
 Marquis of Westminster v. Morrison—(Nov. 8)
 Wood v. Ordish—(November 8)
 Viollet v. Searle—(November 11)
 Drant v. Vause—(November 11)
 Judson v. Ekins—(November 11)
 Beckett v. Thornton—(November 8)
 Beckett v. Swaine—(November 8)
 Prosser v. Seaborne—(November 11)
 Attorney General v. Webb—(November 11)
 Attorney General v. Godson—(November 11)
Undisposed of matters set down since the printing of the book for last Term, and up to the present time (2nd January, 1842).
 Rutherford v. Mc. Cullum—(November 25)
 Burton v. Burton—set down November 2
 Attorney General v. Lord Carrington, *exceptions*—set down November 3
 Attorney General v. Bullock—set down November 3
 Iles v. Dixon, *further directions and costs*—set down November 3
 Morris v. Livie, *further directions and costs and petition*—set down November 6
 Morris v. Loyd, *further directions and costs and petition*—set down November 6
 Attorney General v. Sherman, *further directions and costs*—set down November 8
 Fidler v. Bellingham, *further directions and costs*—set down November 9
 Fidler v. Brook, *further directions and costs*—set down November 9
 Attorney General v. Lord Carrington, *further directions and costs*—set down November 10
 Hawkins v. Hawkins, 2 *causes, further directions and costs*—set down November 11
 Davis v. Bluck—set down November 11

* The dates within parenthesis indicate the days when subpoena notes returnable.

Collins v. Johnson, 2 causes, further directions and costs—set down November 13
 Collins v. Smith, further directions and costs—set down November 13
 Collins v. Bennett, further directions and costs—set down November 13
 Read v. Smith, further directions and costs—set down November 13
 Westwood v. Slater—set down November 13
 Gardner v. Gardner, further directions and costs—set down November 19
 Attorney General v. Cullum, further directions and costs—set down November 22
 Attorney General v. Le Grice, further directions and costs—set down November 22
 Pettingal v. Pettingal, further directions and costs—set down November 27
 Jaquet v. Edwards—set down November 29
 Wilcocks v. Shelley, exceptions—set down Dec. 1
 Strickland v. Strickland—set down December 1
 Perry (pauper) v. Walker—set down December 8
 Page v. Way further directions and costs—set down December 8
 Short—Kirew v. Rayner, 2 cause, further directions and costs—December 9
 Short—Hardcastle v. Cooper—set down Dec. 10
 Reedhead v. Hallen, *pro confesso*—set down Dec. 10
 Crocket v. Crocket, further directions and costs—set down December 17
 Paris v. Hughes, exceptions—set down Dec. 20
 Paris v. Tehbutt, exceptions—December 20
 Short—Buchanan v. Mountain, further directions and costs—set down December 21
 Short—Buchanan v. Goodman, further directions and costs—set down December 21
 Drake v. Drake, further directions and costs—set down December 22
 Lancaster v. Evors, exceptions—set down Dec. 22
 Liddle v. Carden, further directions and costs—set down December 23
 Liddle v. Simpson, further directions and costs—set down December 23
 Attorney General v. Brown, further directions and costs—set down December 23
 Attorney General v. Hall, further directions and costs—set down December 23
 Farrow v. Barlow, further directions and costs—set down December 24

Courtney d. Courtney, exceptions—December 24
 Sampson v. Courtney, exceptions—December 24
 Leeming v. Sherratt, further directions and costs—set down December 24
 Walton v. Sherratt, 2 causes, further directions and costs, set down December 24
 Branch v. Primrose, 2 causes, further directions and costs—set down December 24
 Dover v. Alexander—(January 12)
 Fowler v. Wood—(January 12)
 Edwards v. Meyrick—(January 12)
 Bower v. Cooper—(January 12)
 Harvey v. Bousfield—(January 12)
 Beasley v. Kenyon—(January 13)
 Griffith v. Wood—(January 13)
 Cooke v. Fyrr—(January 13)
 Attorney General v. Millard—(January 13)
 Meek v. Kettlewell—(January 13)
 Villebois v. Ward—(January 14)
 Wilkins v. Wood—(January 14)
 Smith v. Palmer—(January 14)
 Havard v. Price—(January 14)
 Weymouth v. Lambert—(January 14)
 Paris v. Brightmore—(January 14)
 Morgan v. Davies—(January 15)
 Hughes v. Eades—(January 15)
 Waddilove v. Tayler—(January 15)
 Woodhouse v. Jones—(January 15)
 Rose v. Overton—(January 15)
 Wood v. Ford—(January 16)
 Parsons v. Millard—(January 17)
 Jew v. Wood—(January 17)
 Cole v. Frost—(January 17)
 Bonnor v. Bonnor—(January 17)
 Watson v. Bentham—(January 17)
 Keeton v. Lynch—(January 17)
 Lewis v. Leatham—(January 18)
 Piper v. Grittins—(January 18)
 Trail v. Bull—(January 18)
 Welford v. Bell—(January 18)
 Plews v. Graham—(January 18)
 Attorney General v. Pretynan—(January 19)
 Attorney General v. Lewis—(January 19)
 Attorney General v. Merchants Venturers Society—(January 19)
 Norton v. Pritchard—(January 19)
 Thorley v. Yeats—(January 19)
 Heming v. Archer—(January 19)

CROWN PAPER, Hilary Term, 1842.

Middlesex	—The Queen v. The Vestrymen of Marylebone.
Notts	—George Clark and another.
Hants	—The London And South Western Railway Company.
Lancashire	—Richard Gould.
Middlesex	—The Inhabitants of St. Giles in the Fields.
Lancashire	—The Churchwardens of Liverpool.
Yorkshire	—The Inhabitants of Rishworth.
Leicester	—The Inhabitants of Oundle.
	—The Inhabitants of St. Margaret, Leicester.
Middlesex	—The Directors of the Poor of St. Pancras.
	—The Eastern Counties Railway Company.
Somersetshire	—The Inhabitants of Staple Fitzpaine.
Warwickshire	—The Birmingham and Gloucester Railway Company.

CHANCERY SITTINGS, Hilary Term, 1842.

Lord Chancellor.

AT WESTMINSTER.

Jan. 11, 20, 27, 31.—Appeal Motions.
 12.—Petitions.
 13, 14, 15, 17, 18, 19, 21, 22, 24, 25, 26,
 28, 29.—Appeals and Causes.

Justs.

AT WESTMINSTER.

Jan. 11, 20, 27, 31.—Motions.
 12, 29.—Petitions in general paper.
 13, 14, 15, 17, 18, 19, 21, 22, 24, 25, 26,
 28.—Pleas, Demurrers, Causes, Further Directions, and Exceptions.

AT THE ROLLS.

Feb. 1.—Short Causes after swearing in Solicitors.

* * Short Causes, Consent Causes, and Consent Petitions every Tuesday at the Sitting of the Court.

[In the Rolls Sitting Paper, first published, the last day of Term was by mistake stated to be the 1st February.]

Vice Chancellor of England.

AT WESTMINSTER.

Jan. 11, 20, 27, 31.—Motions.

12.—Petitions.

13, 15, 17, 18, 19, 22, 24, 25, 26, 29.—Pleas, Demurrers, Exceptions, Causes, and Further Directions.

14, 21, 28.—Unopposed Petitions, Short Causes, &c.

Vice Chancellor Knight Bruce.

Jan. 11, 20, 27, 31.—Motions, Causes, &c.

12.—Petitions and Causes.

13, 14, 17, 18, 19, 21, 24, 25, 26, 28.—Pleas, Demurrers, Exceptions, Causes, and Further Directions.

15, 22, 29.—Unopposed Petitions, Short Causes, &c.

Vice Chancellor Wigram.

Jan. 11, 20, 27, 31.—Motions, &c.

12, 19, 26.—Short Causes, Petitions, &c.

13, 14, 15, 17, 18, 21, 22, 24, 25, 28, 29.—Pleas, Demurrers, Exceptions, Causes, and Further Directions.

Queen's Bench.

11th January, 1842.

The Court will take the *Special* and *Crown Papers* on the usual days; and every other day throughout the term, *Motions* in the first place, and when they fail, the *New Trial Paper*.

THE EDITOR'S LETTER BOX.

We are informed that a practice has lately crept into most (if not all) of the masters' offices, of charging solicitors a certain sum for "completing the master's draft of his report." This charge has been generally (and very properly) disallowed by the clerks in court on taxation, but instead of being refunded to the

solicitor on his complaining of such disallowance, it is restored to the bill of costs by the master's clerk when left for the certificate. It is the duty of the copying clerk to make the report complete, without charge to the suitor, who already pays a very large sum for the report. The copying clerks, considering they have incurred none of the expenses of a legal education, receive a very handsome remuneration in the shape of a fixed salary, besides the large sums realized by them for copies.

The regulations made by the Benchers of the Middle Temple in February 1835, enabled persons who had been members for three years, during which they had kept twelve terms, to be called to the Bar. This has been rescinded, and the former regulation requiring a membership of five years is now in force.

In answer to "A Subscriber," we presume there is no difficulty in a London solicitor taking the law degrees in the London University after having gone through the proper course of study at King's or University College.

A correspondent enquires whether the solicitor of a mortgagee is entitled to charge the mortgagor for a schedule of the deeds, on paying off the mortgage.

In answer to X. Z. O., we conceive that the bill for the amendment of the law of attorneys, as regards the taking articulated clerks must be prospective, and that our correspondent who states his intention of being articulated to a friend who has not been admitted the full five years, will not be affected by the bill.

"Jus" states that A. devises an estate very much incumbered to B., and inquires whether B. is obliged to take the estate; and if not, what would become of the estate if he refused it?

A correspondent inquires whether there exists any authorized list of towns and counties in themselves, (such for instance, as the *county of the town* of Nottingham) and small debts courts' jurisdictions? If not, he says, some officer of the courts should be obliged to furnish a memorandum of the names and limits of his jurisdiction to form a list to be exhibited at the public offices in London, or some provision of that sort ought to be made, in order that loss of time may be saved in finding out whether the residence of the debtor is or not within a supposed jurisdiction.

Town Clerks.—Doncaster, Thomas Blackwall Mason; Leeds, Edwin Eddison; Newcastle-upon-Tyne, John Clayton; Pontefract, J. Coleman; Manchester, Joseph Heron.

Perpetual Commissioner.—Isle of Wight, Mr. T. F. Cole.

The proposed improvement of the law, by allowing office copies of deeds to be given in evidence in certain cases, shall be considered.

The Legal Observer.

SATURDAY, JANUARY 22, 1842.

— "Quod magis ad nos
Pertinet, et noscire malum est, agitamus.

HORAT.

CONSTRUCTION OF THE APOTHECARIES' ACT.

By the 55 Geo. 4, c. 194, commonly called the Apothecaries' Act, certain penalties are imposed for practising as an apothecary without the authority of a certificate. By the 28th section, however, it is enacted that nothing in that act contained shall extend, or be construed to extend, to prejudice or in any way to affect the trade or business of a chemist and druggist in the buying, preparing, compounding, and vending drugs and medicines, wholesale and retail. A doubt has arisen (apparently without much ground) whether a chemist and druggist might, under this section, attend the sick, and give them medicines, and yet not be liable to the penalties under the act. Where a chemist held himself out as an apothecary, and made a charge in that capacity, no doubt could be entertained that he was liable;^a but if he made no charge, except for medicine, and threw his advice and attendance into the bargain, it was thought by some that the act might be evaded. This idea was countenanced by Mr. Justice Maule, at nisi prius, in a case at the Liverpool Summer Assizes, where it appeared in an action for penalties, that the defendant, a chemist and druggist, had attended persons suffering from fever and other complaints, and had administered medicines, and made a charge for such medicines, and the learned judge told the jury that though the defendant might have done acts which amounted to practising as an apothecary, still, if they were also within the scope of the office or duty of a chemist and druggist, according to the practice of the trade at the

time of the passing of the statute, there was no infringement of it, and a verdict was found accordingly. But a new trial was granted by the Queen's Bench. Lord Denman, C. J., said, "the plaintiffs established a *prima facie* case at least. If the defendant relied on the practice which prevailed before the passing of the act, it was for him to show it." Mr. Justice Patteson went farther:—"There cannot be the least doubt about this case, unless it be contended that an apothecary and a chemist are the same thing:" and Mr. Justice Coleridge said, "the construction contended for would lead to this absurdity, that the apothecaries, admitted to be the better educated class, would be subject to regulations from which the chemist and druggist would be free."^b

Another question of frequent occurrence on this subject is, as to how far surgeons, or assistant surgeons in the army and navy, are exempted from the provisions of the Apothecaries' Act. By stat. 6 G. 4, c. 133, s. 4, it is provided that every person who held, or thereafter should hold, a commission or warrant as surgeon, or assistant surgeon, in his Majesty's army or navy, should be entitled to practise as an apothecary in any part of England or Wales, without having undergone the examination, or received the certificate required by the 55 G. 3, c. 194; and by the 11th section of this act, the act was to continue until the 1st of August, 1826; and it has been recently held that persons who held warrants prior to the 1st of August, 1826, and who were therefore entitled to practise as apothecaries, were not deprived of that right by the expiration of the act.^c The point arose in an

^a *Allison v. Haydon*, 4 Bing. 619; S. C. 1 M. & P. 588.

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^b *Apothecaries Company v. Greenough*, 1 Gale & D. 378.

^c *Steuartson v. Oliver*, 8 Mee. & W. 234.

action of debt for work done as an apothecary. Plea, that the plaintiff was not an apothecary prior to the 1st of August, 1815, nor had at any time obtained a certificate to practise as an apothecary from the Society of Apothecaries. Replication, that before the work was done, and before the 1st of August, 1826, the plaintiff held a warrant as an assistant surgeon, and that the work was done under 6 G. 4, c. 133; and it was held that the replication was good.

It perhaps remains to be decided whether a physician, who administers as well as prescribes medicines, is liable to the penalties of the Apothecaries' Act. It was formerly held that none but a physician could direct the administration of medicines.^d

PRACTICAL POINTS OF GENERAL INTEREST.

GUEST AT AN INN.

If our readers will consult our sixteenth volume, p. 2, they will find much learning collected on inns and inn-keepers. No rule is better settled than that an innkeeper must receive a guest, but this rule is subject to certain qualifications, as appears by the following case:—

Although a traveller is entitled to reasonable accommodation in an inn, he is not entitled to select a particular apartment, or to insist on occupying a bedroom for the purpose of sitting up all night, so long as the innkeeper is willing and offers to furnish him with a proper room for that purpose. Lord Abinger, C.B.—“I am of opinion that the plea is sufficient. I do not think a landlord is bound to provide for his guest the precise room the latter may select. Where the guest expresses a desire of sitting up all night, is the landlord bound to supply him with candle-light in a bedroom, provided he offers him another proper room for the purpose? The plea shews that the landlord did every thing that was reasonable. The short question is, is a landlord bound to comply with the caprice of his guests, or is he justified in saying, you shall not stay in a room in this way, and under these circumstances? I think he is not bound to do so. All that the law requires of him is, to find for his guest reasonable and proper accommodation; if he does that, he does all that is requisite. I am also inclined to think, notwithstanding the case which has been cited of *Rea v. Jones*, 7 Car. & P. 213, that the declaration is bad for want of an allegation of a tender of

the amount to which the innkeeper would be reasonably entitled for the entertainment furnished to his guest. It is not sufficient for the plaintiff to allege that he was ready to pay; he should state further that he was willing and offered to pay. There may be cases where a tender may be dispensed with; as, for instance, where a man shuts up his doors or windows, so that no tender can be made; but I rather think those facts ought to be stated in the indictment or declaration; and I have therefore some doubt as to the complete correctness of the judgment of my brother Coleridge in the case cited; but it is not necessary to decide that point in the present case. This rule must be discharged. *Fell v. Knight*, 8 M. & W. 269.

REFORM IN CHANCERY PRACTICE.

THE CLERKS IN COURT.

In order that our readers may the better judge of the alterations proposed in the Six Clerks' Office, it will be useful to consider minutely, the several duties performed by the Clerks in Court. We cannot more correctly state the nature of those duties than by extracting the evidence of the late Mr. Jackson before the Chancery Commissioners. The great merit of Mr. Jackson is admitted by all parties. He was a complete master of the practice of the Court, so far as it was known or settled, and where new points arose, his judgment was of the greatest value. Mr. Field, in the excess of his candour, acknowledges that it was an argument in favour of any office to have produced such a man as Mr. Jackson. We cannot, however, ascribe to the Six Clerks' Office the merit thus conceded. The skill and knowledge, pains-taking habits, and uniform courtesy, with which Mr. Jackson performed his duties, were the result of his own excellent qualities, and there are other gentlemen in this condemned office, of great merit, and equally able and willing to discharge their duties. The time, however, seems to have fully arrived for a change of system. Anciently the Clerks in Court were the attorneys of the suitors, and in all the Common Law Courts a similar class of persons existed. Time has swept away the Common Law Clerks in Court, and those in Chancery will doubtless soon follow.

After citing each class of duty from the statement of Mr. Jackson, we shall append the suggestions which we have collected from various practitioners, or which appear to us to be reasonable.

^d *College of Surgeons v. Rose*, 6 Mod. 44; reversed in House of Lords, 4 Bing. 619.

"It is the duty of the Sworn Clerks to inspect the ingrossments of bills, demurrers, pleas, answers, disclaimers, and other records; to observe that they are properly addressed and intituled; that the name of counsel is set to such records as require the same, and that the other usual and requisite forms are attended to; after which their name is put thereto. They enter the bill, and the names of the first named plaintiff and all the defendants, and the date of filing, each in his own book; and the name of the cause, in a book or calendar kept in the office for general resort, called the Bill book; and turn the same over into the Six Clerks' study, for his signature, and to file the same."

These duties evidently belong to a record keeper, and in the performance of them, require care and attention, but not much legal knowledge. The solicitor, indeed, should be responsible for the proper form of the pleadings, which he files with the record keeper.

"They must enter all demurrers and pleas with the registrar, within eight days after filing the same, or they are disallowed and overruled as of course."

The solicitor should set down the demurrer for argument.

"They make out every writ, special and common, on the Equity side of the Court, except the *subpoena*; viz. the attachment, proclamation, *distingas*, commission of rebellion, sequestration, *ne exec, habeas corpus, dedimus potestatem*, special *dedimus* by order of Court, commission to examine witnesses, with the schedule of oaths; all special commissions for setting out dower, dividing lands, and ascertaining boundaries; writs of execution of decrees and orders, common injunctions, special injunctions, writs of assistance, *certiorari, procedendo*, and *supersedeas*."

All writs and commissions should be prepared by the solicitor, and sealed by a clerk of the record keeper, in the same way as subpoenas are now issued at the Subpoena Office. The officer, however, should be satisfied by affidavits that attachments, &c. are properly issued.

"They attend the parties and their solicitors, to produce to them, for their inspection, the records of all pleadings and proceedings filed with the Six Clerks, or returned into the office; for which they make no charge. They also make copies thereof when desired, and for those purposes they are entitled to have recourse to, and the custody of, all the records in the causes wherein they are respectively employed.

"They make the amendments in the records of all bills, and the copies thereof, taking care that such amendments are according to the practice of the Court."

These duties clearly devolve on the record keeper and his clerks.

"They make out, engross, and present publications to the Six Clerks to be filed, and give notices thereof to the Sworn Clerks employed for those defendants whose answers are replied to. At their seats, *subpoenas* to rejoin are generally served; they join and strike commissioners' names in joint commissions to examine witnesses, and other special commissions which require the same."

"They enter all rules to produce witnesses, and pass publication in their own and in the Six Clerks' books; and procure the proper entries thereof to be made in the registrar's book; and give notice thereof to the Sworn Clerks for the opposite parties. They enter and sign in the books kept in the Six Clerks' Office, called the rule books, all consents to enlarge and pass publication."

Almost all these proceedings should be taken by the solicitors in the cause, subject, as to a few of them, to the official sanction of the record keeper.

"All witnesses examined in London, are produced and shown at their seats, and notices of their names and residences are left with them, and transmitted by them to their solicitors."

The mode of examining witnesses in Equity, should clearly be altered; and those alterations should be carried into effect by the solicitors, who should attend at the examination and assist the Examiners.

"All certificates as to the state of the pleadings and proceedings in causes are made out by them, to be signed by the Six Clerks, and produced to the Court previous to the orders being made, which depend upon the state of the pleadings; and previous to any cause being set down by the registrar for hearing, such certificate is necessarily produced to and left with the registrar or other proper officer, and the Sworn Clerks are the officers by whom all appearances and consents (on the part of defendants in contempt or otherwise) are signed and entered with the register pursuant to order."

The solicitors should, in these matters, act as they do in the Common Law Courts, and be responsible for the regularity of their proceedings. A solicitor may safely be left to enter his cause for hearing at the proper time, and the record keeper may certify whatever else may be required as to the state of the proceedings.

"They sign petitions of rehearing and appeal, undertaking to pay such costs (if any) as the Court shall award, as to any proceedings had since the decree or order appealed from or sought to be reheard."

This could be better done by the solicitor, whether he or his client is to be personally responsible.

"The names of parties in the several causes

being entered alphabetically in their books, together with the names of the respective Sworn Clerks by whom the defendants have appeared, the solicitors and their clients are frequently attending upon the Sworn Clerks and requesting them to search their books for information to enable them to make the proper services, as at their seats all special petitions, notices of motion, warrants, copies of orders &c. &c., which do not tend immediately to bring the party served into contempt, are necessarily and regularly served, and are by them sent to the solicitors."

Books, properly kept and indexed, should be open for public inspection.

"Subpoenas for the defendants to make better answers, are also served at their seats; and they are personally served with the orders for sequestration nisi against defendants, being peers or members of parliament, and also with the orders for the Serjeant at Arms nisi to go against the parties, not being peers or members of parliament, for not producing and leaving papers with the master, pursuant to order, or not putting in their examinations to interrogatories exhibited before and allowed by the masters; for these purposes, it is of course necessary that the Sworn Clerks should be easily accessible."

Notices &c. should be served on solicitors residing within a certain distance, or by post, beyond that distance, except in cases where personal service is requisite.

"They alone, pursuant to orders of the Court, attend with such of the records as are filed in the Six Clerks' Office, when production of the same is necessary, namely, before the master, to expunge scandal or impertinence. In court, to take the bill *pro confesso*, before the grand juries in London and Middlesex, and at the assizes in the country, upon indictments for perjury; and if a true bill is found, they afterwards attend the Court when the trial is held, or for any other purpose whatsoever."

These duties of attendance should be performed by the clerks of the Record Keeper.

"They certify to the Court and masters any question of practice required of them."

The officer in each department would give this certificate.

"The Sworn Clerks enter the appearances in Court of the respective defendants; they attend them or their solicitors when requested, during their perusal of the record of the bill, without fee, nor is the party under the necessity, or expected to take an office copy of such bill, unless he finds it necessary to answer the same. They attend at the public office and at the master's chambers to receive therefrom all pleas, answers, examinations and depositions taken by commission, after the same have been sworn. They enter all pleas, answers and de-

murrers, with the parties' names, dates of filing, and other requisite matters, in their books, and deliver the same to the Six Clerk to be filed. The depositions they keep by them unopened until publication duly passes; and when publication has passed, the depositions are produced by them to the adverse parties' Sworn Clerk, unopened, and then published in his presence. In cases where the testimony of a witness has been taken, together with that of other witnesses, under a commission to perpetuate testimony, or a *de bene esse* commission, who dies, or it otherwise becomes necessary to publish his deposition, the Sworn Clerk is the officer directed by the order to open the depositions, to select the particular witness's testimony, publish the same, and re-seal the depositions."

All these proceedings should be taken by the Record Keeper at the instance of the solicitor, without any Clerk in Court.

"They sign all consents to petitions for various purposes, and all agreements and elections to proceed at law or in equity; they examine with the witness who is to prove the same, all copies of bills, answers, and other proceedings, with the records in order to make the same evidence on a trial at law, &c."

These matters would be done by the Record Keeper or the solicitor.

[We shall continue this subject in our next number.]

THE LAW OF CARRIERS.

A LATE case of *Pickford v. The Grand Junction Railway*, 9 Dowl. 766; S. C. 8 Mee. & Wels. 372; has decided a very important question as to the liability of common carriers to carry goods offered to them for the purpose of conveyance. In the present article we propose to consider the liability of common carriers in such cases.

In almost the earliest case on this point, namely, *Jackson v. Rogers*, 2 Shower, 327, it was held that a common carrier was bound to accept any goods presented to him for conveyance, and convey them on the offer of a reasonable sum by way of compensation. There the declaration, which was in *case*, charged the defendant as a common carrier, and alleged that a pack of goods had been brought by the plaintiff to the defendant, and that "he refused to carry them, though offered his hire." There *Jefferies*, C. J., said, "The action is maintainable, as well as it is against an innkeeper for refusing a guest, or a smith on the road who refuses to shoe any horse, being tendered satisfaction for the same."

It would seem from this decision, that the person bringing the goods to the carrier was bound to *tender* the amount of the carriage, though the words of the declaration were only "*offered his hire.*" It might be that the Court used them without any very distinct consideration of the difference between a *tender*, technically so called, and an offer, which might merely be an expression of readiness to pay as soon as the amount of the hire was ascertained.

This liability to carry goods when presented for conveyance was, of course, limited by the question as to whether the carrier had convenience for carrying the goods presented. *Batson v. Donovan*, 4 Bar. & Ald. 32, is an authority (among others) for this proposition. If the carrier had not convenience for carrying the goods presented, of course he was not bound to take them.

In Mr. Justice Story's Commentaries on the Law of Bailment, chap. 6, s. 508, he states, as the result of the common law which is adopted in America, that "One of the duties of a common carrier is to receive and carry all goods offered for transportation, upon receiving a suitable hire. This is the result of his public employment as a carrier; and by the custom of the nation, if he will not carry goods for a reasonable compensation upon a *tender* of it, and a refusal of the goods, he will be liable to an action, unless there is a reasonable ground for the refusal. If a carrier refuses to take charge of goods because his coach is full," &c. "it will, if true, be a sufficient legal defence to a suit for the non-carriage of the goods." Here, if we look merely at the words used by that deservedly celebrated Jurist, it seems that there must be an actual *tender* of the hire; and as it is to be a tender, we must presume a tender, in the technical sense in which a lawyer uses it, was meant. Consequently, a readiness to pay, which an *offer* might mean, would not be sufficient.

We now come to consider the last case on the subject, already referred to, namely, *Pickford v. The Grand Junction Railway Company*. That was an action on the case against the company in question as common carriers, for refusing to convey goods. The declaration averred that "the plaintiff was ready and willing, and then offered to pay, the defendant such sum of money as the defendant was legally entitled to for receiving, carrying, and conveying the said goods." To this declaration there was a

special demurrer: the cause assigned was that the declaration did not aver a *tender* to the defendants of the money which they were entitled to receive for the carriage of the goods. After argument and taking time to consider, the judgment of the Court was delivered by *Parke, B.*, in these terms:—

"It was admitted on the argument in this case, that the defendants, in their capacity of common carriers, are bound to carry all goods presented to them for the purpose, but it was contended that that is only on being paid in ready money: and the simple question is, whether, in order to support an action against them for refusing to carry, on the offer of a reasonable sum, it is necessary that the plaintiffs should have made what the law terms a strict tender, in the form required by law. Now the Court think that this is not like the case of a strictly legal tender, a term which is only applicable where an absolute duty, such as the payment of an antecedent debt, is imposed on the party making it, in which case the tender stands in the place of payment, and is in fact a payment, so far as it is in the power of the party tendering to make it one, but which remains incomplete only because the party to whom the money is offered refuses to accept it. Such a tender we consider to be altogether unnecessary in the present case; the acts to be done by both parties, namely, the receipt of the goods, and the payment of a reasonable sum for their carriage, being contemporaneous acts, the carrier being bound to receive the goods on the money being paid or tendered, and the bailer to pay the reasonable amount demanded, on the carriers' taking charge of the goods. The case of *Rawson v. Johnson*, and the other cases cited by Mr. *Martin*, clearly shew, that whenever a duty is cast on a party in consequence of a contemporaneous act of payment to be done by another, it is sufficient if the latter pay, or be ready to pay, the money, when the other is ready to undertake the duty. Here the acts to be done by the plaintiffs and defendants are altogether contemporaneous. The money is not required to be paid down by the plaintiffs until the carrier receives the goods, which he is bound to carry."

The conclusion to be drawn, therefore, from this case, is, that for the future, in order to render a common carrier liable for refusing to carry goods when presented to him for conveyance, it is not necessary to make a formal tender in the technical sense, but a statement that the party presenting the goods is ready to pay a reasonable compensation for the conveyance of them will be sufficient.

SUGGESTED IMPROVEMENTS IN THE LAW.

OFFICE COPIES OF DEEDS.

It has been suggested that it would be expedient to allow persons holding a covenant for the production of deeds to give office copies of such deeds in evidence, under certain restrictions. For this purpose the following bill has been sent us:—

1. That it shall be lawful for any person to have any deed inrolled in the High Court of Chancery, in her Majesty's Courts of Queen's Bench, Common Pleas, and Exchequer of Pleas, at Westminster, or in any one of them, and also an affidavit of the due execution of such deed by all or anyone of the parties thereto, at any time after the execution of such deeds: Provided that the execution of such deed by the party or parties whose execution shall be verified by such affidavit, shall be attested by two or more credible witnesses, and there be inrolled at the same time with such deed an affidavit shewing on what stamps it had been ingrossed, and that it had been duly stamped before it had been executed by any one of the parties thereto.

2. That in case any deed shall be executed by any other of the parties thereto at any time or times after it has been so inrolled, it shall be lawful for any person to have an affidavit of the due execution of such deed by such other party inrolled in the Court, and in no other, where such deed shall have been inrolled: Provided that the execution of such deed by such other party shall be attested by two or more credible witnesses.

3. That every deed and affidavit before being sent to be inrolled under the provisions of this act, shall be indorsed as follows: "To be inrolled pursuant to statute," (here name the sessions and chapter of this act).

4. That after any deed shall have been inrolled under the provisions of this act, it shall be indorsed as follows: "Inrolled, together with an affidavit of the execution thereof, by (naming the parties), and an affidavit of _____, in (naming the Court), pursuant to the statute (naming the sessions and chapter of this act):" And that after an affidavit of the further execution of a deed already inrolled shall have been inrolled, such deed shall be indorsed as follows: "An affidavit of the execution hereof by (naming the parties) has been inrolled in the aforesaid Court, pursuant to the aforesaid statute."

5. That the fee for inrolling every deed and affidavit under the provisions of this act shall not be more than 8*d.* for every seventy-two words thereof, and that the fee for an office copy of any such deed or affidavit shall not be more than 6*d.* for every seventy-two words thereof.

6. That every affidavit made under the provisions of this act shall be intitled in that Court where the deed to which it refers is intended to be, or has been inrolled, and shall

be sworn before a person duly qualified to administer oaths in such Court.

7. That if any party in any action at law which shall hereafter be commenced shall be desirous of giving an office copy of any deed inrolled pursuant to this act in evidence on the trial or hearing of such action, it shall be lawful for him to summon the opposite party before a Judge or Baron (of one of her Majesty's Superior Courts of Record at Westminster) at his chambers, to shew cause why he should not be allowed to put such office copy in evidence in lieu of the original deed: And that it shall be lawful for such Judge or Baron, on the applicant's producing a deed of covenant for the production to him of the original deed, and also an affidavit sworn by him that diligent search and inquiry has been made for such original deed, but that it cannot be found, to make such order for the costs of such application as he may think proper, and either to order the office copy of such deed to be received in evidence or to dismiss the summons: Provided that no such office copy shall be received in evidence, unless at the time of its being tendered in evidence there shall be put in and read before the judge or arbitrator by or before whom the trial or hearing of such action shall take place, an office copy of the affidavit deposing to the stamps on such original deed: And provided also, that such office copy of such original deed shall only be received in evidence of the execution of the original deed by the party of whose execution an office copy of an affidavit shall be produced and read before the judge or arbitrator by or before whom the trial or hearing of such action shall take place: And provided also, that it shall be lawful for the opposite party to take such objections to such office copies of such original deeds and affidavits, or to any one of them, as he would have had a right to have taken to the originals.^a

8. That no affidavit which shall be made or used under the provisions of this act shall be liable to stamp duty.

9. Interpretation clause, &c.

MOOT POINTS.

MORTGAGE.—JUDGMENT.—PRIORITY.

With reference to the case put by "A Subscriber," p. 190, *ante*, it would seem clear that the purchaser will not be affected by the judgments which have been entered up against the mortgagor subsequently to the mortgage, upon the principle that judgments entered up against a grantor, after he has conveyed his property upon trust to be sold, are not binding upon a purchaser from the trustee for sale. *Lodge v. Lyseley*, 4 Sim. 70; *Poster v. Blackstone*, 1 Myl. & K. 297. However, such judgments generally constitute a lien upon the unpaid part of the purchase money, and a

^a This clause might be extended to suits in equity.

purchaser with notice would in ordinary cases be unsafe in paying it to the vendor without first obtaining a release from the judgment creditor. But the mortgage deed in question in all probability contains a proviso that the receipt of the mortgagee shall be a sufficient discharge. If this be the case, the purchaser may safely pay the purchase-money to the mortgagee, who, under such circumstances, will be the only person to see to its proper application; and B. may compel a specific performance against D., without obliging the concurrence of the judgment creditor.

F. P.

LEASE FOR A YEAR.

The following points are submitted on the act for abolishing the lease for a year. 1st. Whether, in the case of the *ad valorem* duty on a conveyance, and that of the bargain and sale for a year being placed upon the same skin, will admit of an additional number of folios, beyond the usual number of thirty on each first skin. 2d. If the usual duty for the consideration be on the first skin, and the duty required for the lease be on a second skin, can more than thirty folios be put upon those two skins, or would not the skin upon which the lease stamp was attached supply the place of a rider, in the case of a release being forty-five folios?

L.

A COUNTRY ATTORNEY CHANGING HIS RESIDENCE.

Has an attorney, who having removed from one county to another, a right to continue his address in his certificate and in the law list, still representing him as practising in the town he has removed from as well as in that to which he has removed, he continuing no office in the former? and if not, what course should be taken to correct such mis-address, which by being continued, deceives distant practitioners in selecting their country agents, and injures those practising in such town.

L.

[The certificate being taken out for a year, cannot be corrected till the following year; and the address must of course remain in the Law List until the next edition. We are willing, at the request of the proper party, to state changes of this kind in the Legal Observer. Ed.]

PLEADINGS.—DEBT.

In answer to L. N., p. 193, *ante*, it will be well to consider the nature of the actions of *assumpsit* and debt. The action of *assumpsit* is divided into a *special assumpsit*, and a general *indebitatus assumpsit*. The action of debt lies either upon a debt of record, by *specialty*, or *simple contract*. The question in the present case relates to the nature of the actions of *indebitatus assumpsit* and debt, and to the difference that exists between them.

Assumpsit is an action for the recovery of damages sustained by the non-performance of an agreement. In *indebitatus assumpsit*, the agreement arises by implication of law. The action of debt lies for the recovery of a sum certain, upon *simple contract*, either express or implied, *specialty*, or record. The question to be determined is, "in what case or event is a plaintiff bound to elect to pursue one of these two forms of action." In *Hard's case*, Sulk. 23, it was decided that "*indebitatus assumpsit* will not lie in any case except where debt lies." And, accordingly, we find that either an action of *indebitatus assumpsit* or debt will lie for goods sold, money lent, paid, had and received, &c. In either of these cases then, the plaintiff is at full liberty to choose his remedy, and he may sue in whichever form best suits his purpose. But although "*indebitatus assumpsit* does not lie in any case except where debt lies," yet the action of debt extends to many cases where the former is not applicable; for debt may be brought upon a record, or *specialty*, whereas *indebitatus assumpsit* is confined to parol agreements. In cases arising upon parol agreements, the action of *indebitatus assumpsit* and debt are concurrent remedies. But over all cases founded upon record and *specialty*, debt has an exclusive jurisdiction. Thus upon a bond, bail-bond, judgment, or a penalty, the plaintiff has no choice, but is bound to seek his remedy in an action of debt, and not in *indebitatus assumpsit*.

But another question has been brought forward. How it is that an action of debt, which is applicable to those cases only in which the plaintiff seeks to recover a sum certain, and a sum *in numero*—can lie, where *indebitatus assumpsit* is the remedy, in which the sum is unfixed and uncertain. But it is denied that the sums sought to be recovered for goods sold, and money lent, &c. are in law unfixed and uncertain. For although the parties have not actually fixed the amount of the sum, yet if they are capable of being made certain by means of computation, it is sufficient, for *id certum est quod certum reddi potest*. *Gardiner v. Bowman*, 3 Law Jour. (N. S.), Exch. 161, is a case in point. In that case, the second count was upon a *quantum meruit*, and it was decided that a count in the form of a count in debt, alleging that the defendant undertook and agreed to pay the plaintiff as much as he reasonably deserved, &c., is a good count in debt. Judgment was for the plaintiffs, and the grounds upon which they relied appear to afford a satisfactory solution to the present question. It is there maintained that debt will lie upon any agreement to pay money where the money is certain or may be rendered certain; that the count is a count in debt, whatever words may be used, if it shows that the plaintiff demands the money itself, and damages for the detention of it, and not merely damages for a wrongful breach of promise; and that this is the only true distinction between debt and *assumpsit*, see Selwyn's N. P., titles, *Assumpsit* and Debt.

I. B. A.

FURTHER RE-ADMISSION OF ATTORNEYS, *last day of Hilary Term, 1842.**Added to the List by Judges' Order.*

QUEEN'S BENCH.

Beisley, William Fletcher, 6, Grove Street, Camden Town.

Olive, Joseph, 46, Great Russell Street; Debtors' Prison, London; and Ironmonger Street.

Pine, Richard, now on his passage to H. M. Settlements on the River Gambia, on the

Western Coast of Africa; late of 18, Buccleuch Terrace, Upper Clapton; Spring Place, Oxford Terrace; George Street, Hampstead Road; Mary Street, Hampstead Road; and on board ship proceeding to England.

[See former List, p. 216, *ante*.]

ATTORNEY'S TO BE ADMITTED.

Easter Term, 1842.

QUEEN'S BENCH.

Clerk's Name and Residence.

Austen, George Durrant, 5, Newman's Row, Lincoln's Inn Fields; 4, Coburg Place; and 66, Great Dover Street.

Anderton, Thomas, Chorley; 66, Hermitage Place, St. John Street Road.

Abraham, G. T. Frederick, 6, Great Marlborough Street.

Bell, John Lee, 4, Mary's Place, Peckham; and Brampton.

Barras, William the younger, Leigh Street, Connaught Terrace.

Butler, John, the younger, 1, Glengall Place, Old Kent Road.

Brittan, William, Bristol; and 10, Euston Square.

Bower, Benjamin, 46, Great Ormond Street; and Liverpool.

Bourne, Robert Hodgson, 18, Wakefield St.; 30, Frederick Street; and 23, Lloyd Square, Soley Terrace.

Berry, James, 17, New Boswell Court; and Alsop Place, New Road.

Browne, George Frederick, Diss; Henrietta Street; 41, Argyle Street; and 3, Regent's Place.

Barrs, Edward, Handsworth; and Birmingham.

Banister, Edward, 17, Clarendon Square; and 11, Howland Street.

Bointon, James, Pickering.

Carrick, Joseph, 4, Mary's Place, Peckham; and Brampton.

Chippendale, Augustus, Alfred Place, Brompton.

Cossarat, David Peloquin, 5, Hartland Terrace, Kentish Town; Brampford; Speke; and 94, Park Street.

Cheshire, Christopher, Hartford.

Crabbe, William Richard, East Wonford; Heavitree, near Exeter; and 37, Gloucester Street.

To whom articulated, assigned, &c.

James Templar, 23, Great Tower Street.

John Latham, Chorley; assigned to John Winder, Chorley.

George Frederick Abraham, Great Marlborough Street.

William Carrick, Brampton.

William Clark and Durley Grazebrook, Chertsey; assigned to Robert Henry Baines, 13, Gray's Inn Square.

John Doughney, 1, Horseleydown Lane; assigned to George Richard Corner, Dean Street, Southwark.

Meshach Brittan, Bristol.

William Tristram Keightly, Liverpool.

Christopher Rymer, Wolsingham.

Benjamin Gray, New Boswell Court.

Harry Browne, Diss; assigned to Thomas Edward Wallace, Diss.

Samuel Carter, Birmingham.

John Richards, the younger, Reading; assigned to Charles E. Deacon, Southampton; assigned to James Burton, 3, Powis Place.

Thomas Bointon, Pickering.

John Lee, Brampton.

John Clayton, Lancaster Place.

Arthur Abbott, Exeter.

Joseph Denison, Manchester; assigned to Thomas Richard Barker, Northwich.

Harry James, Exeter.

Clerks' Names and Residence.

Cracknell, John Benjamin, Lyncome; and Widcombe.
 Chew, Thomas Heath, Manchester.
 Cadle, Edmond, 5, New Ormond Street; 15, Grafton Street; and 10, Great Ormond Street.
 Clowes, Ellis, 7, Brunswick Square.
 Currey, William, 6, Old Palace Yard.
 Cates, William Leist Readwin, 13, New North Street; and Fakenham.
 Chattock, Henry Harvey, 215, Oxford Street; and Solihall.
 Cobb, John, 51, Southampton Row; 25, Henrietta Street; and 20, Great Ormond Street.
 Cobb, Joseph Richard, Brecon.
 Compigne, Alfred, 5, Upper Montague Street.
 Colthurst, Henry, 17, Calthorpe Street, Bristol; 6, Chesterfield Street; and 31, Liverpool Street.
 Cock, Richard, 20, Vauxhall Row, Lambeth; Rostock; and Canterbury.
 Comport, John, 21, New Milman Street; and Strood.
 Church, Francis, Dalston; and Palgrave Place, Strand.
 Chandler, Charles, Shrewsbury; and 23, Wakefield Street.
 Charsley, Frederick, 35, Manchester Street; Beaconsfield; 6, Great Ormond Street; and 36, Gloucester Street.
 Clarke, Robert Eagle, 56, Spencer Street, Northampton Square; and St. Mary Axe.
 Cooke, Richard Campbell Green, 9, Greek Street, Soho; Bedford Row; Everett St.; and Gravesend.
 Dench, James, Ely.
 Darwin, Edward Levett, 37, Upper Stamford Street; and Sydney.
 Dawson, Huntingdon, 3, Wardrobe Place, Doctor's Commons; and Newcastle-upon Tyne.
 Edwards, Thomas Kersey, 8, Carpenter Street, Berkeley Square; 15, Gray's Inn Square; and 41, Bedford Place.
 Eade, Joseph, Clapham Common; and Hereford.
 Freeth, Thomas Jacob, Saint John's Wood.
 Finden, Francis, 9, Charter House Square; and Winchester.
 Fisher, Edward, 55, Montague Square.
 Godden, Henry James, 6, St. George's Terrace.
 Gribble, William, the younger, 13, Everett Street, Brunswick Square.
 Granger, Benjamin, Tredegar Square.
 Gabriel, James Alexander, 5, Gray's Inn Square; and Calne.
 Hayes, Charles William, 7, St. George's Terrace.
 Higgingsbottom, Wm. Henry, Ashton-under-Lyne.
 Hartley, J. Altham Da Costa, 3, Wellington Street, Strand.

To whom articles, assigned, &c.
 Edward Webb, Walcott.

William Christopher Chew, Manchester.
 James Henry Dowling, Gloucester.
 John Ellis Clowes, 10, King's Bench Walk.
 Benjamin Currey, Old Palace Yard.
 Robert Cates, Fakenham.
 Thomas Chattock, Solihall; assigned to Edmund John Jennings, 4, Elm Court, Temple.
 Samuel Haines, 29, Tavistock Place; assigned to David Harrison, 5, Walbrook.
 John Jones, Glanhonddu; assigned to Edward Williams, Brecon.
 James Sowton, 27, Great James Street; assigned to John Gregory, 12, Clement's Inn.
 John William Cornish, Bristol; assigned to Thomas Charles Cornish, Bristol.
 Thomas Thorpe De Lasaux, Canterbury.
 John Gibbs, Strood.
 William Robert Hall, Hungerford.
 Thomas Salt, Shrewsbury.
 John Charsley, Beaconsfield; assigned to Bryan Holme, 10, New Inn.
 William Clarke, Thetford.
 Thomas Peregrine Turner, 13, Bedford Row.
 Luke Dench, Ely.
 Francis Jessop, Derby; assigned to John James Joseph Sudlow, the younger, Chancery Lane.
 Abraham Dawson, Newcastle-upon-Tyne.
 Henry William Sole, 68, Aldermanbury.
 William Henry Bellamy, Hereford.
 Augustus Henry Burt, 32, Essex St. Strand; assigned to William Pyne, Inner Temple.
 William Wilton Woodward, Pershore; assigned to Henry Whately, Pershore; to Chas. Woolridge, Winchester.
 Frederick James Fuller, Carlton Chambers, Regent Street.
 James Trower Bullock, Truro; assigned to Compton Reade, 64, Lincoln's Inn Fields.
 William Gribble, Barnstaple; assigned to Richard Every, Exeter.
 Mark Henry Gregory, Wax Chandlers' Hall.
 Nathan Atherton, Calne.
 Frederic Talbot, 47, Bedford Row.
 William Leach Buckley, Ashton-under-Lyne.
 James Hartley, 27, New Bridge Street.

Clerks' Name and Residence.

Homfray, Jeston, 7, Ampton Street, Worcester; and 5, Harpur Street.

Hutchinson, John Alexander, 1, Amwell St. Pentonville; and Darlington.

Hawthorn, Reuben, 5, Stanhope Place, Uxtoeter.

Hancock, Frederick, Shipston-on-Stour.

Hewer, John Hibberd, Melksham.

Harris, Charles, 20, Liverpool Street; and Bristol.

Harle, Henry Boulton, Leeds.

Houghton, William, Walthamstow; and 2, Arundel Terrace.

Howard, Thomas, 7, Norfolk St., Strand.

Jaques, John, the younger, 30, Upper North Place, Gray's Inn Road.

Jefferson, William Thrush, Northallerton; 20, Highbury Terrace; and 23, Bedford St.

To whom allotted, assigned, &c.

Charles Pidcock, Worcester.

Henry Hutchinson, Darlington; assigned to James Williamson, Verulam Buildings.

Adlard Welby, Chapel-en-le-Frith; assigned to Henry Nethersole, 3, New Inn Buildings.

John Henry Clark, Shipston-on-Stour.

Charles Thomas Moule, Melksham.

Matthew Parkins, Bristol.

Thomas Harle, York, and Leeds.

George Badham, 4, Verulam Buildings.

Thomas Burton Howard, Norfolk St., Strand.

John Jaques, 8, Ely Place.

Robert Bennett Wakon, Northallerton; assigned to John S. Walton, Northallerton.

(To be continued.)

SUPERIOR COURTS.

Lord Chancellor.

LUNACY.—EXECUTION OF COMMISSION.

The domicile of a person is the proper place for executing a commission of lunacy against him, although far distant from the place where the acts, on which unsoundness of mind is founded, were committed.

William Thomas Tinné, Esq., is the son of a merchant in Liverpool, was educated for the military profession, and served in the army until 1839, when his friends placed him in a private madhouse near London. He was discharged as cured in the summer of 1840, and lived for seven months afterwards at the house of his brother, who succeeded to the father's establishment in Liverpool, had his horses there and his apartments kept for him exclusively. In April, 1841, he was going on a visit to his father then residing at the Hague, and in his way through London, he fell in with some ladies of easy virtue, hired a furnished house for one near the Strand, and lived there with her, went then to live at the house of another in the west end, and married her in May, and hired a house in the next street, but did not occupy it. He was induced by his relatives to go to Liverpool, and where they found him; there they obtained the usual certificate of medical gentlemen, and confined him in a lunatic asylum. There being no doubt that he was a fit subject for a commission of lunacy, the question was whether the commission should be executed in London or in Liverpool.

Mr. Wakefield and Mr. Mc Christie, for the brother, the petitioner for the commission.—The domicile of the supposed lunatic was in Liverpool, and there, or in the immediate neighbourhood, are all the witnesses who can speak to his conduct, including the officers and men of the regiment in which he served, now quartered in Manchester. Whenever he came to London he lived at hotels, or in fur-

nished lodgings, until he became an inmate in the house of the person whom he married. It was not usual to remove a lunatic 200 miles.

Mr. Whitmarsh and Mr. Bazalgette, for the wife, contended that the party resided as much, if not more, in London than in Liverpool. In the latter he was merely on a visit to his brother, but in London he had hired houses in Craven Street, Green Street, and in Chapel Street. When he was confined to a madhouse on a former occasion, it was in the neighbourhood of London, and it was in London he committed the acts from which unsoundness of mind was to be inferred. The avowed object of the commission was to ascertain the time of the lunacy, and to set aside the marriage which was contracted in London. The petitioner could not say this gentleman was of unsound mind in Liverpool; for if he was, why let him off on a visit to the Hague? London was the scene of his insane conduct: the wife had an interest in ascertaining the date; but it was out of her power to bear the expense of attending in Liverpool, having expended all the money she had while Mr. Tinné lived with her. They cited *Ex parte Smith*, 1 Swanston, 4.

The Lord Chancellor had no doubt that this person's domicile, for the purpose of the commission, was in Liverpool. All his relations were there—the officers and privates of the regiment in which he was an officer; in short, all the witnesses who could speak to his conduct from his infancy were in Liverpool, or in the immediate neighbourhood. Liverpool was therefore the proper *venue*, if he might so call it, for executing the commission, the subject of it being also there.

On an application that the wife be allowed to attend the execution of the commission,—

His Lordship said, she may; but the allowance of her costs would depend on the result.

In the matter of Tinné.—At Westminster, January 19, 1842.

Rolls.**PRACTICE.—ADVANCING CAUSE.**

The Court will not advance a cause on the ground of serious injury being likely to accrue to one of the parties interested by the hearing being delayed, or of important benefit to such party being made manifest to the Court by a speedy hearing.

Pemberton moved, *ex parte*, to advance this cause under the following circumstances:—The testator named in the pleadings had so left his property as to render it doubtful whether his widow took the whole absolutely, or whether she took only a partial interest, and his children the remainder. It was at first considered so clearly an absolute gift to her, that she had shortly after the testator's death conveyed the property to trustees, for the purpose of settling it according to her wish; but a doubt having afterwards arisen, a bill was filed on behalf of the children, who were infants, claiming the benefit of a construction in their favour. The cause was set down for hearing, but was not likely to be heard for some time in its regular order, and an opportunity having presented itself of placing out one of the children very advantageously, all parties were desirous that a portion of the fund in Court standing to the credit of the cause, which was the produce of the testator's estate, should be applied for his benefit, but as no reference could be made to the Master to settle maintenance until it was determined what parties were entitled to the fund, and the prospects of the infant for whom the advancement was required might be seriously injured unless the application were granted, he submitted that it was a case which might fairly be excepted from the general rule of not advancing a cause.

The Master of the Rolls asked Mr. Pemberton whether he thought it could be certified as a short cause; but Mr. Pemberton not being willing to pledge himself to this, his Lordship said, that however painful it was to his feelings to be compelled to refuse such an application, yet he could not in justice to the other suitors, who relied on their causes coming on in their turn, comply with it.

Crockett v. Crockett, January 14th, 1842.

CHARITY.—BREACH OF TRUST.—ACQUIESCENCE.

The trustees of a charity having in 1725, alienated the charity property for a term of 999 years: Held, that the Court was not bound to assume that the transaction was improvident as regarded the interests of the charity, but must consider it with reference to the state of circumstances at the time, and that no objection having been made to the alienation for upwards of a century, there must be some strong grounds for the Court's interference.

Turner and Blunt, for the information, stated that it was filed upon the recommendation of the charity commissioners, and the object of it was to set aside a lease made by the trustees of an estate which was devised to the churchwar-

dens of the parish of St. Mary Outwich, in the city of London, upon trust for the benefit of the poor of that parish. The estate consisted of eight houses, a tenement, coal-house and premises in Hainmond's Alley, near Bishopsgate Street, and in the year 1725, it was conveyed to the South Sea Company for 999 years in consideration of 135*l.* present payment, and a rent of 45*l.* a year, although it appeared by the parish books that it was producing a rental of 77*l.* a year. This being considered a grossly improvident bargain, the information was filed for the purpose of having the conveyance declared void. It had frequently been held, that a conveyance of charity property in perpetuity could not be sustained, and it was evident that in this instance the transaction was concocted solely for the benefit of private individuals, inasmuch as although the conveyance was made nominally to the South Sea Company, yet some few years afterwards a lease was granted of a portion of the property to Mr. Gore, who was one of the churchwardens of the parish, and also a director of the South Sea Company at the time the conveyance was executed. If the Court should not at once declare the transaction void, there were at all events quite sufficient grounds for an enquiry. *Attorney General v. Green*, 6 Ves. 452; *Attorney General v. Backhouse*, 17 Ves. 283.

Tinney and Lovat, for the South Sea Company, contended, that although the rent at the time the conveyance was made was nominally 77*l.* a-year, yet that such rent was subject to various charges for repairs, &c., so that the rent paid by the company yielded a greater profit, as they undertook to do all repairs, and pay all charges upon the property, and the arrangement was beneficial to the charity. There was no positive law against the alienation of charity property, but the question in all such cases was whether the arrangement made by the trustees was a provident arrangement, and such as the Court would have sanctioned had the matter been brought under its consideration. *Attorney General v. Cross*, 3 Mer. 524; *Attorney General v. Warren*, 2 Swanst. 302.

Pemberton and James Russell, for the representatives of the late Mr. Mellish, who had purchased Mr. Gore's interest, pursued the same line of argument, and also urged that there was no proof of the Mr. Gore, of whom Mr. Mellish purchased, having been a director of the South Sea Company; but on the contrary the presumption was against his being such a director, either when the conveyance was made to the company, or the lease was granted to him, for although he might originally have been a director, yet the statute of George the 1st. passed in consequence of the South Sea bubble, had declared all the directors at that time ineligible to hold any office, and this was prior to the time when the arrangement was made between the company and the trustees of the charity. There was nothing also upon the face of the deeds to affect Mr. Mellish with notice of this being charity property, for the recitals merely showed

it to be vested in the churchwardens of the parish of St. Mary Outwich, without stating for what purpose.

Lloyd, Simpson, Hetherington and Roll, for other defendants.

Turner, in reply, insisted that even if the Court should not think the transaction ought to be set aside, there was a strong case for enquiry, for upon referring to the parish books, it appeared that considerable sums had been expended in repairs on the estate shortly previous to the lease being executed to the company; and it was impossible not to come to the conclusion that the arrangement was most improvident towards the interests of the charity.

The *Master of the Rolls* said, the object of the information was to set aside a lease granted in 1724, for 999 years, and it was admitted to be an alienation of charity property. The grounds upon which the lease was contended to be void, were not only on account of its being an alienation for a perpetuity, but of its being injurious to the charity; and no doubt it was the duty of trustees so to manage charity property as to preserve its original character; but in some cases the charity may be benefitted by alienation, and then such alienation was not forbidden. Whatever the Court could do for the benefit of the charity, the trustees might do also, and the Court would not set aside an arrangement made by trustees, which was considered at the time beneficial, because after the lapse of many years a greater rent might be obtained, but the original fairness of the transaction must be considered. Now in this case no fraud could be imputed to the trustees; the parties best qualified to judge were consulted; and from the nature of the property the arrangement made seemed to have secured a permanent benefit to the charity. The information appeared to have been founded on the notion that at the time the transaction in question was completed, a clear rent accrued to the charity of 76l. a-year, after deducting all charges for repairs, &c.; but that computation was evidently erroneous, and conceiving there was sufficient presumption to show that there had been a prudent disposition of the charity property, the information must be dismissed. The costs of the trustees must be paid out of the rental.

The Attorney General v. South Sea Company, Nov. 18th and 19th, 1841.

Vice Chancellor of England.

MARRIAGE ARTICLES, CONSTRUCTION OF.—WHAT TO BE DEEMED USUAL AND CUSTOMARY CLAUSES.

Where a reference is ordered to the Master to settle and approve a proper settlement with all usual and customary clauses, powers to invest in real securities, and for the appointment of new trustees, may be inserted, though not in the original articles.

By the decree made on the hearing of this cause, on the 13th of November, 1840, a reference was ordered to the master, to settle and

approve a proper settlement according to the law of England, with all usual and customary clauses, having regard to the contract originally entered into between the parties named in the decree, being the parties beneficially interested in such settlement. The contract was made in the year 1825, previous to the marriage of the parties just referred to, who were then residing in France; and by it certain properties were agreed to be settled according to the law of England, and three persons were appointed attorneys to manage and receive such properties, who were from time to time to invest them in the English and French funds. Two of the persons so appointed had died, and the third having declined to act, certain other persons had been nominated as trustees in their stead, and it formed part of the order of reference, that the master should enquire whether the persons so nominated were fit and proper persons to be appointed in the room of the trustees appointed by the contract. On the 11th of December last, the Master made his report, and by it he certified that he approved of the persons proposed to be appointed trustees, and that he had also settled and approved a proper settlement pursuant to the directions contained in the decree. To this report exceptions had been taken, on the ground that the Master had allowed clauses to be inserted in such settlement for changing the securities in which the trust property should from time to time be invested, and investing the same in real security in England or Wales, and for the appointment of new trustees in the event of death, &c.

Richards and R. Palmer for the exceptants, contended that as the decree expressly directed that the settlement should be prepared according to the terms of the original contract, it was not competent for the Master to travel out of such contract, and to insert clauses never contemplated by the parties to such contract. They cited *Bailey v. Mansil*, 4 Mad. 226, and *Lindow v. Fleetwood*, 6 Sim. 152.

Bethell and Addis, contra, said, that the greater part of the property being in this country, the parties no doubt contemplated its being laid out in the usual manner, and the clauses complained of must, therefore, be considered as coming within the definition of usual and customary clauses. They cited *Hill v. Hill*, 6 Sim. 136.

The Vice Chancellor.—The only question is, what is the true construction of the decree? for the Court is bound by that until reversed. [His Honor then read the decree, and continued:] By these terms it is to be understood that all usual and customary clauses are to be inserted, but they are to be determined according to the terms of the contract; and considering the clauses excepted to as usual and customary clauses, the only question is, whether there is anything in the contract to exclude them: and first, with regard to the important clause authorizing a change of securities. His Honor said, he considered that usual and customary, because it was of the greatest convenience to parties that such a clause should be inserted; and there was nothing in the

contract to exclude it. It was true, the parties had pointed out English and French funds for the investments, but it was evident they contemplated that a portion of the property might be taken out of the English and French funds, for the contract spoke of its being *diverted, or mortgaged*, and the insertion of that clause was therefore right. Then, as to the clause for the appointment of new trustees, the Court having already appointed new trustees in lieu of those originally appointed, the power had in fact been exercised, and there was no reason therefore why that clause should not also be inserted. Exceptions overruled.

Sampayo v. Gould, January 14th, 1842.

Vice Chancellor Wigram.

PRACTICE.—DISTRIBUTION.

The Court will not direct the distribution of a fund until it has been previously ordered to be carried over to the account of the party entitled.

Mr. Coleridge appeared upon a petition, asking the distribution of a residuary fund now in Court, in trust in this cause. He stated that he had the usual certificate of the Accountant General, but admitted that there had been no order to carry the money over.

Wigram, V. C.—The Court never makes an order on petition, unless the money has been directed to be carried over to the account of the party entitled. This is necessary, otherwise there is no *constat*. The Court must first have ascertained to whom it belonged.

Es parte Irge in re Kenny. Westminster, January 19th, 1842.

PRACTICE.—PARTIES.—PETITION.

A petition for the repayment of money deposited by five subscribers to a joint-stock undertaking, ought to state in what right such money is claimed, and

Quere, whether all the subscribers ought not to be, in some way, brought before the Court.

Mr. Rogers applied for the repayment of 4000*l.*, which had been deposited according to the usual course, previously to an application to parliament for a private act relating to the Bradford Water Works. The petitioners were J. Rand and others, and stated that the act had been passed in the last session. The petition mentioned that the petitioners "and divers other persons had become subscribers to the undertaking, and that the said petitioners had become entitled to the money so deposited under and by virtue of a certain act of parliament."

Wigram, V. C.—I do not know how I can make any order in this case. The petition should show more distinctly and precisely, in what right these five persons claim the money. It seems to me that all the persons to whom the money may belong, are not before the Court. It is, or it may be, money belonging, not only to these five petitioners, but to per-

haps a hundred persons. Whether they are entitled to receive it, is another question.

Re Bradford Waterworks Company, Westminster, Nov. 3, 1841.

PRACTICE.—PAYMENT OF LEGACIES.

Where a legacy is given, not in the ordinary way, but under a power of appointment by a married woman, an enquiry as to the number of children is necessary, previously to an order for payment out of Court to a legatee.

A petition was presented, praying the payment of a certain sum of stock to a legatee, with the privity of the Accountant General. The petition stated, that there were only six children of the testatrix.

Wigram, V. C.—Would it be regular to pay it without enquiry as to who were the children. This legacy is not given in the ordinary way as a pecuniary legacy, but under the power of appointment by a *feme covert*. There ought to be an enquiry as to who are the children of the party.

It was stated, that all the parties had been before the Court by a supplemental bill.

Wigram, V. C.—That makes no difference. I think there should be an enquiry.

Re Osborne, Westminster, Nov. 3, 1841.

Queen's Bench.

[Before the four Judges.]

USURY.—JUDGMENT.—CHARGE ON LAND.

Where a defendant borrows money on a bill, agreeing to pay more than 5 per cent., and gives a warrant of attorney as a collateral security, the fact that judgment may be and is immediately entered up under the warrant of attorney, and so by the operation of the 1 & 2 Vict. c. 110, the defendant's lands become charged with the debt, will not bring the case within the 2 & 3 Vict. c. 37, and render the securities void for usury.

Mr. Knowles moved for a rule to set aside the warrant of attorney which had been given in this case, on the ground that it was void for usury. The affidavit on which he moved was that of the defendant, which stated that he had applied to the plaintiff for a loan of 500*l.* for the space of two months; this loan was promised him, and he was to give a bill for the sum of 600*l.* payable in two months. Besides this, he was told that he must also give a warrant of attorney, which he did, at a further cost of 20*l.* This warrant of attorney authorized the plaintiff at once to enter up judgment for the whole sum of 600*l.*, and judgment was accordingly entered up at the moment. The bill on becoming due was dishonoured. Under these circumstances, it is clear that the whole transaction is usurious, and cannot be protected by the provisions of the statutes. By the 2 & 3 Vict. c. 37, s. 1, the act to exempt certain bills of exchange and promissory notes from the laws against usury, it is provided that "nothing herein contained shall extend to the loan or forbearance of any money upon security of any lands, tenements, or hereditaments, or any es-

tate or interest therein." Now here it appears by the defeasance of the warrant of attorney that the plaintiff was to be at liberty to enter up judgment immediately. The effect of so entering up judgment must be by the provisions of the 1 & 2 Vict. c. 110, s. 13,^a immediately to bind the land of the defendant. The merely depositing title deeds would only create an equitable mortgage in favour of the person with whom the deeds were deposited: it would not bind the land; but a defendant goes further, when he gives a warrant of attorney concurrently with his bill of exchange, and authorises the plaintiff to enter up judgment immediately for the amount of the bill.—[Mr. Justice *Wightman*.—Does it appear that the defendant has any lands, and meant to bind them?] Indirectly it does, for the affidavit says that the defendant had engaged in the transaction, in order "to raise a large sum of money upon landed estates of considerable value." But whatever was the intention of the parties, will make no difference in the case, for the law will now charge the land at all events, in virtue of the judgment entered up against the defendant.

Mr. Justice *Pattemn*.—The security here does not say that the money was borrowed on the security of any lands. To bring the case within the acts referred to, the loan itself ought to be made on the security of the lands. It is not sufficient for that purpose that by the operation of law, the defendant's lands may ultimately be charged with the debt. The intention of the legislature was confined to the case of a security originally given, charging the lands. The act was not meant to apply to cases where the lands only indirectly come to be affected in this way.

Rule refused.—*Withey v. Gilliard*, H. T., 1842. Q. B. F. J.

Queen's Bench Practice Court.

EJECTMENT.—ERROR CORAM NOBIS.—REPLEVIN.—EXECUTION.

Where it appears that a writ of error coram nobis is brought for the purpose of delay to the plaintiff, the Court will grant a rule nisi to issue execution, notwithstanding the writ has been sued out.

Burston moved for a rule to shew cause why execution should not issue in this case, notwithstanding the writ of error *coram nobis* which had been sued out on the part of the defendant. It was an action of ejectment, and the circumstances under which the present application became necessary were these:—the defendant *Mobbs* laid claim to certain property belonging to a Mr. Sturt, of about

200,000*l.* value. A person named *Matthews* was tenant to Mr. Sturt of part of the property so claimed. This tenant had received notice to quit, and *Mobbs*, before the notice had expired, became acquainted with the tenant, and served him with a declaration in ejectment. Of this proceeding no notice was given by *Matthews* to Mr. Sturt. Judgment was signed against the casual ejector, and the sheriff gave possession of the property in tenancy to *Mobbs*; subsequently Mr. Sturt applied to the Court, and on payment of costs was let in to try the action. This action was, however, never prosecuted by *Mobbs*, and judgment absolute against him as in case of a nonsuit was obtained. The notice to quit had by this time expired, and an action of ejectment was then brought by Mr. Sturt against *Matthews*, for the purpose of turning him out of possession. *Mobbs* then by some means got himself admitted to defend as landlord; the ejectment proceeded, and the cause was tried; a verdict was found in favour of the plaintiff. After this, *Mobbs* preferred an indictment for perjury against the steward of Mr. Sturt, at the October sessions, which of course could not be found unless the proceeding in the course of which the steward had been sworn was regular. Within the first four days of the following term, a new trial was moved for on the ground that one of the jurors who tried the ejectment cause had not been sworn. The Court, however, refused that rule, although it was positively stated on oath, that one of the said jurors had not been sworn; it was at least so stated by the counsel who made the application, apparently speaking from the copy of the affidavit which had been briefed, and not from the original affidavit itself. On examining the affidavits which had since been filed, it was discovered that it was only sworn that one of the jurors had not been sworn, "to the best of the observation and belief of the deponent." The costs of Mr. Sturt were taxed at above 500*l.* The defendant then brought the present writ of error *coram nobis*, no bail being required by the statute in cases of error in fact. It was perfectly clear that this writ of error must be brought for the purpose of delay. The grounds of error stated in the writ were "that the jury had not been duly, properly, perfectly, and completely sworn." It was difficult to understand, in consequence of the vagueness of these expressions, what the particular objection was to the swearing of the jury. If one of the jurors had not kissed the book, it would be an objection coming within the meaning of such a writ. But supposing the objection to be that one of the jurors had not been sworn, that was inconsistent with the defendant's conduct in charging the steward of Mr. Sturt with perjury on the trial at which the jury in question returned their verdict, as the fact of perjury being committed pre-supposed the validity of the proceeding in which the untrue evidence was given. If it was not, then no indictment for perjury could be sustained. Besides this proceeding by ejectment, Mr. Sturt distrained

* By which it is enacted "that a judgment entered up in any of the Superior Courts at Westminster, shall operate as a charge upon all lands, tenements, rectories, advowsons, tithes, rents, and hereditaments of or to which the person against whom it had been so entered up, is possessed or entitled, &c."

upon Matthews for rent; and the latter replied the goods seized. An action of replevin was afterwards brought, and a verdict passed for the defendant. No possible doubt, therefore, could exist, that Mr. Sturt was entitled to the property in question. As little doubt could be entertained that the object of Mobbs was to delay the lessor of the plaintiff. It was therefore submitted, that a rule ought to be granted.

Williams, J. granted a rule.

Rule nisi granted.—*Doe d. Sturt v. Mobbs*, H. T. 1842. Q. B. P. C.

LUNATIC.—DISTRINGAS.—SPECIAL SERVICE.

It is no objection to issue a writ of distringas against a defendant, merely on the ground that he is a lunatic, and confined to a lunatic asylum, if in other respects the practice of the Court has been complied with.

In this case an action was commenced by a writ of summons, against the defendant who was a lunatic, and was confined in a lunatic asylum. Attempts were made to serve the lunatic in the usual way, but without effect. It was therefore, sought to issue a writ of *distringas* against him. Accordingly the three calls and two appointments were made at the asylum, and at the last call, the copy was left with the keeper of the establishment.

H. Hill applied for leave to issue a writ of *distringas* against the defendant. The question was, whether the steps taken were such as authorized the issue of the writ against the defendant.

Williams, J., thought there was no objection to the course suggested, and accordingly allowed the writ of *distringas* to issue.

A writ granted.—*Dodson v. Ward*, H. T. 1842. Q. B. P. C.

DISTRINGAS.—OUTLAWRY.—ABSEONDING.—DEFENDANT'S RESIDENCE.

If it is sought to proceed to outlawry, it is not sufficient to obtain a distringas for that purpose to swear that the defendant has gone abroad without shewing the effort to find him in this country.

Bere moved for a *distringas*. The object of the application was to proceed to outlawry. The affidavit supporting the application stated that the defendant had gone abroad, as the deponent believed, to avoid his creditors, but did not mention having made any application at the residence of the defendant, or any efforts to find him.

Williams, J., thought, unless the affidavit stated the efforts made to serve the defendant at his residence, the rule for the writ of *distringas* could not be granted. It was not sufficient to make an affidavit of the defendant having left the country, without shewing the grounds on which the conclusion that he had so done were shewn. The rule must, therefore, be refused.

Rule refused.—*Anonymous*. H. T. 1842. Q. B. P. C.

COMMON PLEAS.

SET OFF.—AWARD

In an action of debt, to which the defendant pleaded a set off, the plaintiff substantiated a demand for a sum exceeding that proved by the defendant to be due to him under the set off: an arbitrator to whom the cause was referred awarded a verdict entered for the plaintiff to be reduced to the sum constituting the difference between the two amounts, with 1s. damages: Held, that the plaintiff was entitled to the general verdict, and that the award was a substantial finding upon the plea of set off.

Mr. Serjt. Shee moved for a rule, calling on the defendant to shew cause why the verdict found by the arbitrator to whom the cause had been referred, should not stand, and why the issues should not be all entered generally for the plaintiff. It was an action for debt, and the plaintiff claimed 300*l.* in his declaration for work and labour &c. The defendant pleaded, first, payment and acceptance by the plaintiff of a sum of money in satisfaction and discharge; secondly, a set off to a greater amount than the sum claimed in the declaration. On the 4th Nov., a verdict was taken by consent for the plaintiff, and the cause was referred, and the arbitrator made his award as follows: "I adjudge as to the said cause, that the defendant was indebted to the plaintiff for money received by the defendant to the use of the plaintiff, in the sum of 103*l.* 7*s.* in manner and form, &c. As to the second issue, I find that the defendant did not pay, nor did the plaintiff accept any sum of money in manner &c.; and that the plaintiff was indebted to the defendant in the sum of 105*l.* 3*s.* 11*d.* in manner and form as in the said last plea in the said cause is alleged: and I do order and award that the amount of the verdict as already entered be reduced to the sum of 3*l.* 3*s.* 1*d.*, and that the damages already entered be reduced to 1*s.* Upon the authority of *Tuck v. Tuck*, (5 M. & W. 109; S. C. 7 Dowl. P. C. 373), it was contended, that the plaintiff was entitled to a general verdict, the amount found to be due to him exceeding that due from him to the defendant. A rule nisi having been granted, on a subsequent day,

Mr Serjt. Channell moved to set aside the award, upon the ground that there was no finding upon the third issue.

Per Curiam.—There is no doubt that there is a substantial finding; and that the plea of set off not being divisible, (*vide Moore v. Butlin*, 7 Ad. & El. 598; 2 Nev. & P. 436), the plaintiff is entitled to the general verdict.

Rule refused.—*Ablett v. Goddard*. H. T. 1842. C. P.

MALICIOUS ARREST.—EVIDENCE.—NONSUIT.

The plaintiff brought an action for a malicious arrest, and in support of his declaration, called a sheriff's officer, who stated that he had arrested the plaintiff by virtue of a warrant which he

could not now produce; a writ was proved to have been sued out at the instance of the defendants, against the plaintiff, and a conversation between the defendants having reference to the plaintiff being in custody, was shewn to have taken place; and it was also proved, that an application made to a judge for the plaintiff's discharge, was opposed by the defendant's attorney: Held, that there was evidence for the jury, that the plaintiff had been arrested at the instance of the defendants, and that the defendants were not entitled to a nonsuit.

This was an action for a malicious arrest, under a writ issued in pursuance of an order of *Parke, B.*, by virtue of the 1 & 2 Vic. cap. 110, to which the defendants pleaded Not Guilty. The cause was tried before *Erskine, J.*, at the sittings after M. T. 1841, when a sheriff's officer was called to prove the arrest to have been made, and he stated that the plaintiff had been arrested under a warrant, which he was unable to produce, having deposited it with the porter at the lock-up-house, where the plaintiff was lodged. The warrant was not produced by any other witness, but the issuing of a writ at the instance of the defendants was duly proved. A conversation was also shewn to have taken place between the defendants, when one of them said, in allusion to the plaintiff, "we mean to punish him if we can; we have got him fast, and if it cost 500*l.*, will punish him," and evidence was also given, that upon an application being made to *Parke, B.*, at chambers by the plaintiff for his discharge, on the ground of the insufficiency of the affidavit upon which the order was obtained, that application was opposed by the defendant's attorney. It was objected, on behalf of the defendants, that the warrant ought to have been produced, for that without that, there was no evidence to connect the arrest with the writ; but this objection being overruled, a verdict was found for the plaintiff with 15*l.* damages.

Mr. Serjt. *Bompas* now moved to set that verdict aside, and for a nonsuit, on the ground of the non-production of the warrant.

Tindal, C. J.—The only question here was, whether the plaintiff was arrested and put in custody under the particular writ, which is alleged to have been sued out at the instance of the defendants; and no question arises as to his being taken under any particular warrant. I think that in the course of the case abundant evidence was produced to support the declaration. The making of the order by Mr. Baron *Parke*, and issuing of a writ thereon, were duly proved. There was only one order and one writ, and taking this circumstance together with the conversation between the defendants, which could only refer to the arrest made under the writ sued out at their instance, and the fact of the defendant's attorney opposing the discharge of the plaintiff at chambers, I think that there can be no doubt that there was no other arrest of the plaintiff, except at the suit of the defendants, and that there was, therefore, abundance of evidence on which

the jury might come to the conclusion at which they have arrived.

Coltman, Erskine, and Maule, J. J., concurred.

Rule refused.—*Petre v. Lament and another.* H. T. 1842. C. P.

NOTES OF THE TERM.

THE NEW JUDGE.

MR. CRESSWELL, Q. C., of the Northern Circuit, and M. P. for Liverpool, has been appointed to the vacant Judgeship in the Common Pleas, on the resignation of Mr. Justice *Bosanquet*. He will go to the Oxford Circuit.

THE ENSUING EXAMINATION.

A PARAGRAPH has been going the round of the newspapers stating that upwards of 160 persons were applying to be admitted this Term. This must include double notices, and the names of persons examined in previous Terms. The number to be examined on Tuesday next is 106 only:—these will be quite sufficient, we suppose, to supply the deaths and resignations since last Term! The Examination does not appear in the least to thin the ranks of the Candidates.

THE EDITOR'S LETTER BOX.

THE next Part of the Analytical Digest of all the Reports of Cases decided in all the Courts will be published early in the next month; and we shall continue, at convenient intervals, to give a Summary of the Decisions reported in the Legal Observer, with occasional Notes. Our readers will thus be in possession, in a collective form, of every point of law and practice. Where the cases are important, we shall give the judgments, with the authorities cited.

C. T. A. is informed that, although "in an action at law, where a verdict is returned for the plaintiff, he can tax his costs, and issue execution at once against the defendant," the defendant's attorney cannot tax his costs as against his own client, and issue execution; but he must first deliver his bill, duly signed, one lunar month; and then, if not paid, he may proceed by action.

T. G. states that a vendor sells his freehold estate to a purchaser for 1000*l.*, at which time there is a mortgage upon the same for 900*l.*: the mortgagor solicits, and the mortgagee allows the 900*l.* to remain on security of the property in question; and he inquires what, in such a case, will be the *ad valorem* stamp duty, the conveyance being made *subject* to the mortgage. There can be no doubt, we conceive, that the duty must be paid on the whole sum of 1000*l.*

We beg "Causidious" will send a copy of the letter he wishes to be inserted.

The letter of "Att. ad Leg." shall be attended to.

The Legal Observer.

SATURDAY, JANUARY 29, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LETTERS

FROM MR. AMBROSE HARCOURT, STUDENT AT LAW, TO MR. THOMAS PRINGLE, OF TRINITY HALL, CAMBRIDGE.

LETTER III.

Dear Pringle,

HAVING now been some time with Barnaby, I begin to vary the scene a little, and instead of remaining behind the scenes all day, I occasionally mix among the public, and go to see the great actors playing their parts; and, indeed, I might well pursue the metaphor. A pleader's chambers lets you into many of the secrets of a cause; and if you have your wits about you, you see there many of the mysterious springs by which its public performance is assisted and carried on. If I have taken a part, therefore, in the pleadings in any cause, however insignificant, which I hear is coming on for trial, and I can at all make it convenient, I go down to Court and hear it tried, and I pick up a good deal in this way. The only harm is, that it rather unsettles me for the rest of the day. After I have passed some time in Court, and got my mind excited with all the interesting matters that are there transacted; more especially, when I have had any, the slightest, part in them, I find I cannot return with any patience to Tidd. I am thus almost forced to employ the rest of the day in Westminster Hall, and I go from Court to Court noting down the leading points, as they strike me, of the Judges. You may like to hear what I think of them, however *jeune* you may find my notes. I enjoy a day of this sort very much, although it is certainly rather dissipating to the mind, and should not be indulged in too often.

Where shall I then begin. Oh! I must tell you first, what I think of Lord Lyndhurst. You know what a favourite he has always been with me! How I cheered when he was elected last year! such a bold dashing fellow! Whatever may be his faults, every body must admire him, and his whole life has such attractive points to a young man. Here he is, three times Chancellor, and all won by the sheer force of his talents. Besides, to us Cambridge men, he must be always on many accounts dear.

Well, with all these feelings of pride and admiration, I entered his Court, and remained there some time. I could not get near him at Cambridge, but I have seen him well enough in the Court of Chancery. His countenance certainly, once seen, is not easily forgotten: it is full of intelligence and meaning. Judgment sits throned on his broad forehead, and no ordinary degree of prudence, not to call it by any harsher word, plays about his mouth. His manner encourages the advocate, but there is withal a certain sarcastic smile occasionally, which shows that no great impression is made. I can conceive this to have some terror in it, if its whole force was put out; at present it is only playful. Indeed, his whole manner appeared to me mild and subdued. I hear that it is much changed from what it used to be. They tell me he is not what he was: that he is now only a splendid ruin; but certainly, if he is on the decline, I wish I could have seen him in his meridian. He appears to me, still to have the faculty of seizing on the main point to be decided; he has still a most retentive memory of all the facts in a cause; and it was only the other day that I heard him, off-hand, deliver a judgment that would have been sufficient stock in trade for any ordi-

nary Judge to set up with. Age is, however, creeping on him. He appears to me to be more infirm than his time of life would warrant. The varied scenes he has gone through, have left their traces behind; and I am inclined to believe the current rumour in the profession, that when he has completed certain reforms in the Court of Chancery, he will retire from the laborious office he now holds. That his counsel must still be valuable; that his great and varied talents must always be serviceable to his own party, there can be but one opinion; that he may wield the extensive powers of the holder of the Great Seal, so long as he may please, there can be no doubt: but if report does not belie him, he has no great fondness for very hard-work; and several indications, unimportant in detail, but of some weight if considered together, lead me to think that our Lord High Steward will not very long continue Lord High Chancellor, both in the House of Lords, and in the Court of Chancery.

Yours truly,

AMBROSE HANCOCK.

NOTES ON EQUITY.

CHARGE OF DEBTS.

THE question whether a trust for the payment of debts in a will of personal estate, will prevent the operation of the Statute of Limitations, has been much discussed of late. Sir John Leach, M. R., decided that it would not. This decision was reversed by Lord Brougham, C.* But the latter decision was reversed by the House of Lords.^b The rule is however otherwise, so far as real estate is concerned.^c

In a very recent case,^d a testator directed his estates to be paid out of his real and personal estate, and he afterwards provided, that if his personal estate should fall short in paying his debts, then he empowered his executors to enter into the receipt of the rents of his freeholds, until the same should be wholly paid off. The personal estate was sufficient for payment of the debts; and Lord Langdale, M. R., held, that nevertheless, a trust had been created for payment of the

debts out of the realty, so as to prevent the operation of the Statute of Limitations, and that the real estate remained liable to pay a simple contract debt, which had been left unpaid after distribution of the residuary personal estate. "It was argued," said his Lordship, "that because the testator after making the charge or creating the trust, has in a subsequent part of his will directed that if the personal estate should fall short of paying his debts, the executors should enter into the receipt of the rents of the real estate, and therewith pay his debts, he has shewn an intention to charge the real estate only, in the event of the personal estate proving deficient; but the first general charge does not appear to me to be varied by the subsequent direction to apply the personal and real estate for the same purpose in a particular order; and I do not think, that according to this will there is no trust, because the personal estate was sufficient; a trust was created: it became the duties of the trustees to pay the debt."

RECEIVER.

A PLAINTIFF, although appointed receiver in the cause, cannot, before decree, be ordered as plaintiff, to produce books or accounts in his possession for the inspection of a defendant. "As plaintiff," said Lord Cottenham, C., "I consider it perfectly clear, that he is not subject to be called upon by an adverse application to produce documents in his possession. It is very different after a decree which orders it. In the present instance I consider the plaintiff merely as receiver of property, common to both parties; and I apprehend it to be quite clear, that having some documents in his possession relative to his accounts, it is right to make an order to compel him to produce them to the other party. If he has kept accounts at all, they must include some items relating to the partnership affairs. Clearly, the Court has, and I apprehend the Master ought to have, power to compel the plaintiff to produce all accounts kept by him connected with the partnership. There is considerable difficulty in not ordering inspection at the premises, because any other place will be inconvenient; but at the same time, I feel that a party in possession of documents as receiver at his own house, is not obliged to consent to an inspection of them there."^e

* *Jones v. Scott*, 1 Russ. & Mylne, 255; 3 L. O. 302.

^b 4 Cl. & Fin. 382.

^c *Braithwaite v. Britain*, 1 Kepp, 206; *Wintar v. Innes*, 4 Myl. & Cr. 101.

^d *Crallan v. Oulton*, 1 Beav. 1.

^e *Maunder v. Atlas*, 4 M. & G. 507.

JUDGMENTS, SO FAR AS THEY AFFECT REAL PROPERTY.

REFERRING to our last article (at p. 213), we now continue this important subject.

If there was some legal impediment which prevented the judgment creditor from taking the property of his debtor in execution, under either of the statutes which have been referred to, equity would frequently lend its assistance, and give the creditor, by its own process, the benefit which he would have had at law if no such impediment had intervened.

In the words of Sir John Leach (*Forth v. Duke of Norfolk*, 4 Madd. 504,) a judgment creditor has at law, by the Statute of Frauds, execution against the equitable freehold estate of the debtor in the hands of his trustees, provided the debtor has the whole beneficial interest; but if he has left a partial interest only in his equitable freehold estate, the judgment creditor has no execution at law, though he may come into a court of equity, and claim there the same satisfaction out of the equitable interest as he would be entitled to at law, if it were legal. Every voluntary assignee of the equitable interest of the debtor, will be in the same situation with respect to the claim of the judgment creditor as was the debtor himself. Every assignee for valuable consideration will hold the equitable interest, discharged of the claim of the judgment creditor, unless he has notice of it before his consideration is paid." Equity would assist a judgment creditor by paying off the judgment and allowing him his legal priority, where, under any circumstances, the Court was selling and administering the lands of the debtor; by appointing a receiver; or by entitling him to redeem a subsisting mortgage. As to the equitable relief, see *Neate v. Duke of Marlborough*, 3 Myl. & Cr. 416; *Silver v. Bishop of Norwich*, 2 Swanst. 112 n.; *White v. Bishop of Peterborough*, 2 Swanst. 109; *Tunstall v. Trappes*, 3 Sim. 300, *Sharpe v. Earl of Scarborough*, 4 Ves. 538.

A judgment, however, was not such a lien in equity as would entitle the creditor to a sale in the lifetime of the debtor, simply for the purpose of having his debt satisfied. *Neate v. Duke of Marlborough*, 3 Myl. & Cr. 416.

As the judgment creditor derived his right against the debtor's lands from the statute, equity could only follow the law; and consequently the remedy of the creditor in equity was confined to the moiety which might have been taken in execution under the statute if there had been no legal impediment.

Thus, in *Stileman v. Ashdown*, 2 Atk. 608, Lord Hardwicke said, "Equity follows the law in this case; and as the plaintiff can only extend a moiety there, he shall have no more here. Suppose it was the case of a bond creditor, he might have an action of debt against the heir, and judgment against him upon assets descended; and this he is entitled to at common law, for it is the debt of the heir and the action is in the *debet* and *detinet*; but if a judgment was obtained against the ancestor, a *scire facias* could not be brought against the heir, because at common law, the heir was not bound. There is no doubt but, if it had continued a bond, the whole assets would have been liable in the hands of the heir; but before the statute of Westminster, there was no remedy against the ancestor in his lifetime upon a judgment on his land, and it is that statute which subjects one moiety thereof to the judgment. The consequence of this is, that, notwithstanding the ancestor is dead, if the land comes into the hands of the heir or purchaser, it comes equally bound." *O'Gorman v. Comyn*, 2 Sch. & Lef. 137.

But this rule must be taken with some qualification in the case of a judgment creditor redeeming a subsisting mortgage, who is entitled to have satisfaction out of the *entirety* of the lands which are included in the mortgage. And the creditor had the same right by virtue of his judgment against the *entirety*, where the lands of the debtor became subject to administration in equity, and were subject to a subsisting mortgage, which the creditor was then entitled to redeem. *Stonehewer v. Thompson*, 2 Atk. 440; *Sharpe v. Earl of Scarborough*, 4 Ves. 538; *Tunstall v. Trappes*, 3 Sim. 300.

As a general rule, the Court would suspend its relief until the judgment creditor had sued out his *elegit*.

Thus, in *Neate v. The Duke of Marlborough*, 3 Myl. & Cr. 407, a creditor filed his bill, praying that he might be declared entitled to an equitable lien upon an annual sum of 3000*l.*, to which the debtor was entitled out of certain freehold estates; and the bill was demurred to on the ground that it contained no express allegation that the creditor had sued out his *elegit*. Lord Coltenham allowed the demurrer. "How (said his Lordship) can the judgment which *per se* gives the creditor no title against the land, be considered as giving him a title here? Suppose he never sues out the writ, and never, therefore, exercises his option, is this Court to give him the benefit of a lien to which he has never chosen to assert his right? The reasoning would seem very strong that as

this Court is lending its aid to the legal right, the party must have previously armed himself with that which constitutes his legal right; and that which constitutes the legal right is the writ. This Court, in fact, is doing neither more nor less than giving him what the act of parliament and an ejectment would, under other circumstances, have given him at law. The sole reason for coming into this Court being founded on a right which the writ of *elegit* confers, the creditor cannot come without having obtained that right."

But it is to be concluded from Lord *Cottingham's* judgment in this case that where the lands of the debtor became subject to administration, and there were other circumstances which rendered a sale indispensable, that the Court in clearing the estate of charges, would pay off the judgment without requiring the creditor to sue out an *elegit* *Neate v. Duke of Marlborough*, 3 Myl. & Cr. 417; *Tunstall v. Trappes*, 3 Sim. 286.

Upon this principle it was, that the House of Lords in *Barnewall v. Barnewall*, 3 Ridg. Parl. Rep. 61, afforded the necessary relief to the creditor, although he had not sued out the *elegit*.

Where property was conveyed to such uses as *A. B.* should appoint, and *A. B.* afterwards exercised his power, the appointee claimed immediately under the instrument by which the power was limited, as if the appointment had been contained in the very instrument itself, and consequently was unaffected by judgments entered up subsequently to the creation of the power.

Thus, in *Doe d. Wigan v. Jones*, 10 Barn. & Cres. 459, Lord *Tenterden*, C. J., said, "It has been established ever since the time of Lord *Coke*, that where a power is executed, the person takes under him who creates the power, and not under him who executes it. The only exceptions are, where the person executing the power has granted a lease or any other interest, which he may do by virtue of his estate, for then he is not allowed to defeat his own act. But suffering a judgment is not within the exception as an act done by the party, for it is considered as a proceeding *in invitum*, and therefore falls within the rule." See also *Tunstall v. Trappes*, 3 Sim. 300.

And in these cases notice was immaterial: *Eaton v. Sanster*, 6 Sim. 517; *Skeeles v. Shearley*, 8 Sim. 153; on appeal, 3 Myl. & Cr. 112.

The 6 G. 4, c. 16, s. 108, enacts that no creditor having security for his debt, shall receive upon any such security more than a rateable part of such debt, except in

respect of an execution or extent served and levied before the bankruptcy; and provides that no creditor, though for a valuable consideration, who shall sue out execution upon any judgment obtained by default, confession, or *nil dicit*, shall be paid otherwise than rateably with other creditors.

The 1 W. 4, c. 7, s. 7, has materially abridged the exception contained in the above section, which it recites, and enacts that no judgment signed or execution issued after the passing of the act on a *cognovit actionem*, signed after declaration filed or delivered, or judgment by default, confession, or *nihil dicit*, according to the practice of the Court, in any action commenced adversely, and not by collusion for the purpose of fraudulent preference, shall be taken to be within the provision of the said recited act.

A judgment upon a warrant of attorney is not within the protection of this statute, though given without collusion or intention of fraudulent preference. *Crossfield v. Stanley*, 4 Barn. & Adol. 87.

Upon the 21 Jac. 1, c. 19, s. 9, (of which the 6 Geo. 4th, c. 16, s. 108, is in substance a re-enactment) it has been decided that the bankruptcy of the debtor would not deprive the judgment creditor of his lien upon the lands which had been sold between the judgment and the bankruptcy; and though the judgment creditor could not come in upon the bankrupt's estate for any more than his proportion with the other creditors, yet that he would be at liberty to extend his judgment against a purchaser, who bought the land prior to the bankruptcy. *Orlebar v. Fletcher*, 1 P. Wms. 718; *Newland v. —*, 1 P. Wms. 91.

In *Sloper v. Fish*, 2 Ves. & Bea. 145, the bankruptcy intervened between the execution of the deeds of conveyance and the payment of the purchase money; and the question was, whether, assuming the conveyance to be absolute, and not, as was contended, an escrow only, a judgment would be operative as against the lien of the assignees for the purchase money; and if not, what would prevent its attaching upon the estate; and Sir *W. Grant*, M. R., considered the point to be too doubtful to compel the purchaser to take the title derived from the assignees.

In *Sharpe v. Roahde*, 2 Rose, 192, Sir *W. Grant* held that judgment creditors had no lien upon lands articleed to be sold before a bankruptcy, the conveyance of which remained unexecuted at the date of the commission.

The statute 4 & 5 Will. & Mary, c. 20.

(made perpetual by the 7 & 8 Will. 3, c. 36,) directs that the Clerk of the Essoigns of the Court of Common Pleas, the Clerk of the Dockets of the Court of King's Bench, and the Master of the Office of Pleas of the Court of Exchequer, should make and put into an alphabetical docket, by the defendant's names, a particular of all judgments entered in the said respective Courts of Michaelmas and Hilary terms, before the last day of the next ensuing terms, and of the judgments of Easter and Trinity terms, before the last day of Michaelmas term. And by the 3d section, it is enacted that no judgment, not docketed and entered in the books as aforesaid, shall affect any lands or tenements, as to purchasers or mortgagees, or have any preference against heirs, executors, or administrators in their administration of their ancestor's, testator's, or intestate's estates.

When the property is situate in either of the register counties, it becomes necessary to consider the Local Register Acts so far as they can affect the rights of the judgment creditor with respect to third parties.

The statute of 5 Ann. c. 18, s. 4, enacts that no judgment shall bind any manors, lands, or hereditaments in the West Riding of the county of York, but only from the time that a memorial thereof shall be entered up at the register Office of that Riding; but the 11th section provides that if any judgment be registered within *thirty* days after the acknowledgment or signing thereof, all the lands that the defendants or cognizor had at the time of such acknowledgment or signing shall be bound thereby.

And the statute of 6 Ann. c. 35, ss. 19 & 28, contains similar enactments for the East Riding of the county of York, and for the town and county of the town of Kingston-upon-Hull.

By the statute 7 Ann. c. 20, s. 18, no judgment shall bind any manors, &c. in the county of Middlesex, but only from the time that a memorial of such judgment shall be entered at the Register Office for that county.

By the statute 8 Geo. 2, c. 6, s. 1, judgments in the North Riding of the county of York shall be adjudged void, as against any subsequent purchaser or mortgagee for value, unless such memorial thereof be registered; but the 33d section provides that if any judgment be registered within *twenty* days after the acknowledgment or signing thereof, all the lands that the defendants had at the time of such acknowledgment or signing shall be bound thereby; and that the registry of a memorial of such

judgment, within the time aforesaid, shall be as available, to all intents and purposes, as if such memorial thereof had been entered in the said Register Office on the day of the signing or acknowledgment of such judgment.

Notwithstanding these acts, their principal object being to secure subsequent purchasers and mortgagees against secret incumbrances, a purchaser who bought with notice of any undocketed or unregistered judgment, was bound by it *in equity* as completely as if the judgment had been docketed or registered within the period prescribed by the particular acts. *Thomas v. Pledwell*, 7 Vin. Abr. 54; *Davis v. Earl of Strathmore*, 16 Ves. 419; *Le Neve v. Le Neve*, 3 Atk. 646.

But constructive notice was not sufficient to make an undocketed or unregistered judgment binding upon a purchaser. *Wyatt v. Burnell*, 19 Ves. 439. The notice must be *actual*; and notice to the agent of the purchaser in the same transaction is, for this purpose, regarded as actual notice to the purchaser himself. *Le Neve v. Le Neve*, 3 Atk. 646, 655; *Tunstall v. Trappes*, 3 Sim. 307.

If a person purchases a portion of an estate which is subject to a judgment, and execution is sued out against the purchaser only, the debtor, his heir, or purchasers of other portions of the land, are bound to contribute with him. But if execution is sued out against any portion of the lands which remain undisposed of, neither the debtor or the heir will be entitled to contribution in respect of any part of the lands which are in the hands of a purchaser. *Sir W. Herbert's case*, 3 Co. 12 b; 2 Eq. Ca. Abr. 223.

Sir Edward Coke observes, that where it is said in our books that if one purchaser only be extended for the whole debt, he shall have contribution, it is not thereby intended that the others shall give or allow any thing by way of consideration; but it ought to be intended that the party who alone is extended for the whole, may, by *audita querela* or *scire facias*, as the case requires, defeat the execution, and thereby shall be restored to all the mesne profits, and compel the conusee to sue execution of the whole land. So in this manner every one shall be contributory; that is, the lands of every terretenant shall be equally extended. 3 Co. 14 b.

With a view to remedying a hardship to which creditors were subject, of having their executions avoided if the extent omitted any portion of the land which was liable to the

judgment, it was enacted by the 16 & 17 Car. 2, c. 5, s. 2, that where any judgment, statute, or recognizance, shall be extended, the same shall not be avoided or delayed by occasion that any part of the lands are or shall be omitted out of such extent: saving always to the party or parties whose lands shall be extended, his and their heirs, executors, and assigns, his and their remedy for contribution against such person or persons whose lands are or shall be omitted out of such extent from time to time.

But it would seem that a purchaser has no right of contribution from purchasers of other portions of the estate of the debtor, who derive title under a previous conveyance. See *Hartly v. Flaherty*, 1 Lloyd & Goold, 219; 5 Jarm. Byth. by Sweet, 61.

In *Allwell v. Wade*, 1 Lloyd & Goold, temp. Sugd. 252, a party seized of several estates, and indebted by judgment, settled one of the estates for valuable consideration, with a covenant against incumbrances, and subsequently acknowledged a judgment. Two questions were raised in the case—first, whether the judgments prior to the settlement should be thrown exclusively upon the settled estate, in exoneration of the unsettled estates; and secondly, if the settled estate should not be considered liable to exonerate the unsettled estates, whether the subsequent judgment creditors had a right to make the settled estate contribute to the payment of the prior judgments. Lord Chancellor Sugden held that the prior judgments should be thrown altogether on the unsettled estates, and that the subsequent judgment creditors had no right to make the settled estate contribute.

Previously to the 3 & 4 Will. 4, c. 27, there was no statute limiting the time within which execution might be sued out upon a judgment; but the Court generally presumed the satisfaction of an unexecuted judgment, which had been entered up for more than twenty years, unless some positive evidence was produced to rebut such presumption. *Mulke v. Pickering*, 2 Barn. & Cress. 555; *Greenfell v. Girdlestone*, 2 You. & Coll. 662.

The 3 & 4 Will. 4, c. 27, s. 40, however, enacts that no action, suit, or other proceeding shall be brought, to recover any sum of money secured by any mortgage, judgment, or lien, or otherwise charged upon any land or rent, but within twenty years from the accrual of the right, unless in the meantime some part of the principal money, or some interest thereon, shall have been paid, or some acknowledgment of the right thereto shall have been given in writ-

ing, signed by the person by whom the same shall be payable, or his agent, to the person entitled thereto, or his agent. See *Berrington v. Evans*, 1 You. & Coll. 434.

[We shall resume this subject in an early number.]

DIGEST OF THE QUESTIONS AT THE EXAMINATION.

Hilary Term, 1842.

COMMON AND STATUTE LAW, AND PRACTICE OF THE COURTS.

Process.

Within what time after the date of a writ of summons must the copy of it be served?

If the defendant keep out of the way to avoid personal service of a writ of summons, are there any means by which to compel an appearance?

When it is now sought to arrest a defendant on mesne process, what is essentially necessary to be stated in the affidavit?

Within what time after service of a writ of summons is it necessary to endorse on such writ the day of the week and month of such service? and if omitted, what is the consequence to the plaintiff?

When may judgment of nonpross, for want of a declaration, be signed; and what step is necessary before signing it?

Pleading.

Is the signature of counsel necessary to a joinder in demurrer?

In actions of trespass, can you have more than one count for acts committed at the same time and place?

What effect has the plea of non est factum in actions of debt on specialty or covenant?

Statute of Limitations.

What is the course of proceeding requisite to prevent the statute of limitations running against a debt?

Evidence.

If you are in possession of a document which you intend to produce on the trial of a cause, should you be justified in incurring the expense of taking a witness to prove it? or is there any way of avoiding that expense?

Judgment by Default.

Where a defendant in an action of assumpsit suffers judgment by default, how should the plaintiff proceed to ascertain the amount due to him?

If the action be in debt, what difference would that make in the proceeding?

Interpleader.

When a defendant, having no personal interest in goods in his possession, is sued by two different claimants of such goods, has he any, and what relief at law?

Withdrawing Juror.

What is the effect of withdrawing a juror on a trial? and does it prevent the plaintiff bringing another action for the same cause?

Tender.

Will a tender be good if clogged with any and what conditions?

CONVEYANCING.

Estates.

When a real estate is devised to a person without any words of limitation, what estate does the devisee take?

In limitations in strict settlement, is the estate limited to trustees to preserve contingent remainders, vested or contingent? State the reason for your answer?

What are cross remainders, and can they be implied in a will or deed?

Does the surrender of an original lease affect an under lease? and give a reason for your answer.

Merger.

What are the requisites to produce a merger of an estate?

Will a term of years under any circumstances merge in a term of shorter duration?

Conveyance.

What is the advantage of taking a conveyance of a reversion by lease and release, instead of by grant?

Curtsey.

To entitle a husband to curtesy, is it necessary that the issue of the marriage should be the next heirs to the estate of the wife?

Executor.

What is an executor de son tort; and in what cases is a discharge given by him available against a claim brought by the legal representative?

Distribution.

Is there any, and if any, what difference between the distributive share of an intestate's effects taken by brothers and sisters of the intestate of the whole and of the half blood?

Trust.

How does notice of a trust affect a purchaser for valuable consideration?

Can a trustee delegate a power to give receipts?

When an estate is offered to a trustee at a price below its actual value, upon condition that the title should not be investigated, is the trustee justified under the usual indemnity clause inserted in settlements in purchasing the estate out of the trust funds, at the request of his cestuique trust, upon those terms? and give a reason for your answer.

Assets.

The stat. 3 & 4 W. 4, c. 104, renders freehold and copyhold estates liable to the payment of specialty and simple contract debts. Under the statute are these estates legal or equitable assets; and is there any class of creditors entitled to be paid their debts before others?

Mortgage.

Will the first mortgagee on advancing more money, and having notice of a meane mortgage, be entitled to tack the first and third mortgage against the meane mortgagee.

EQUITY AND PRACTICE OF THE COURTS.

Appearance.

If a defendant, on being served with subpoena, refuses or neglects to appear there-to, what application is the plaintiff at liberty to make thereupon, with a view to obtaining such appearance; and after the expiration of what time from such service can this application be made?

In order that the plaintiff may succeed on the application referred to in the last question, what fact must be made to appear to the satisfaction of the Court?

Answering.

Is the time given to a defendant for pleading, answering, or demurring in a *country* cause to an original or supplemental bill, or bill of revivor, or amended bill, greater, or less than, or is it the same as that which is allowed to a defendant in a *town* cause? If greater or less, what is the difference?

Enforcing Orders.

If a party who is by order or decree of the Court ordered to pay money, or to do any other act within a limited time, and after due service of the order or decree neglects to obey the same, what is the nature of the order which may, under these circumstances, be obtained against such party; and does the practice in this respect differ, and if so, how, from that which existed on the 1st of January, 1841?

Is, or is not, a person who is not a party to a cause, and in whose favour an order

has been made, entitled to enforce obedience to such order by the same process as if he were a party to the cause? If there be any difference between the two cases, state in what such difference consists.

Creditors.

Are creditors who have come in and established their debts before the Master, under a decree or order in a suit, entitled to any, and if so, what benefits under the orders of the 26th August, 1841, to which they were not previously entitled?

Cy Prés.

Explain what is meant by the rule or doctrine maintained by a Court of Equity, and which is commonly termed *Cy Prés*?

Husband and Wife.

If a husband is compelled to have recourse to the assistance of a Court of Equity in order to recover property in right of his wife, are there any, and if so, what terms which will be ordinarily imposed upon him in such case?

Are there any circumstances under which the rule referred to in the last question will be relaxed in favour of the husband? If so, give an instance or instances in which such rule will be so relaxed.

Evidence.

A. brings an action against B., in which it is supposed that C., who has no interest in the matters in question between the two former parties, can give important evidence for A. Can A., on C. refusing to disclose what the nature of his testimony would be, compel C. to do so by a bill of discovery? and in either way of answering this question, give the reason for such answer.

Constructive Notice.

State some cases in which a party not having actual notice will be held to have constructive notice of a fact, so as to affect him in a Court of Equity the same way as if he had received such actual notice.

Will, or will not, a party who has attested the execution of a deed be held by a Court of Equity from that circumstance to be affected with notice of the contents of such deed?

Injunction.

Has a party, by whom private letters have been written and sent to another person any property absolute or qualified in the letters so sent as against the person receiving them? If so, under what circumstances, to what extent, and in what

way can he assert his title to this species of property in a Court of Equity?

A., in the course of a confidential employment by your client B. is entrusted by the latter with an important secret in connection with such employment, which he threatens to make public; is, or is not this a case in which a Court of Equity has a jurisdiction to prevent the disclosure threatened? and if it has, state the remedy which you would advise B. to adopt.

Consideration of Contract.

Is, or is not, inadequacy of price, or inequality of bargain, a sufficient ground of itself for avoiding a contract in a Court of Equity?

BANKRUPTCY AND PRACTICE OF THE COURTS.

Fiat.

What facts should be ascertained by a solicitor before striking a docket?

In what case is a town fiat usually obtained, and in what a country fiat; and what are the exceptions to the common rule?

What time is allowed for prosecuting a town fiat, and what a country fiat?

Petitioning Creditors.

Are there any circumstances which prevent a creditor from being a petitioning creditor? If any, state some of them.

Trading.

What constitutes a sufficient trading?

Act of Bankruptcy.

Can a trader, imprisoned for a crime, commit an act of bankruptcy during such imprisonment; and how?

Can he during such imprisonment commit an act of bankruptcy by lying in prison; and if so, under what circumstances?

Proving Debts.

May debts payable at a time not arrived when the proof is tendered, be proved under a fiat; and if so, is there any qualification of the proof?

Can the surety of a bankrupt prove under the fiat in any, and what, case?

If a debt for which a person is surety have been proved under a fiat, what will be the surety's rights on his having discharged the debt?

Trusts and Executorships.

Do trust estates vested in a bankrupt pass to the assignees under his bankruptcy?

Will a bankrupt who is a sole trustee or executor be allowed to prove as a debt against his own estate what is owing by him in either character; and if so, what is necessary to his being so allowed?

REFORM IN THE CHANCERY OFFICES.

SIX CLERKS' OFFICE.

CONTINUING the detail of duties of the Six Clerks and Sworn Clerks, extracted from the unexceptionable evidence of the late Mr. Jackson, we come to the latter stages of a cause. It must be admitted that no one could make more of the seeming utility of his order than Mr. Jackson, or set forth with more plausibility and graveness the services performed by his craft. According to his account, it would appear that the Six Clerks' Office and the Court of Chancery were identical, and could not exist without each other.

He thus proceeds to describe the functions which the Clerks in Court perform :—

"They draw up the docket of decrees, and obtain the signature of the Lord Chancellor, Master of the Rolls, and Vice Chancellor thereto, or such one or more of them as pronounced the judgment, and they enrol the same; and here it may be fit to notice that the decrees are now but seldom enrolled, and there must therefore be considerable risk of their loss. The only apparent or probable reason to be assigned for such omission, is the great expense which attends the proceeding on account of the established practice of reciting the bill, answers, and other proceedings at length; whereas it is submitted that if the decretal part only, with a short introduction to the same, was in future deemed sufficient, and if the same was annexed to the records of the pleadings, it would not only be preferable to the present practice, but would be a very great saving of expence; and instead of the enrolment passing to the Rolls, it would be transferred, together with the records, to the Tower."

It is palpable that a useful amendment might be effected in this part of the practice. Every order and decree should be properly recorded for the purpose of its due preservation and easy reference; and an appeal to a higher tribunal should be limited only by a reasonable time from the pronouncing of such order or decree. We opine that the solicitors and record clerks will effectually discharge these duties.

"They make out all exemplifications of the records, and attend the Masters to examine the same.

"With the sworn clerk is deposited all deeds, books, and papers, left by the parties upon filing the bill or answer, or pursuant to an order of Court, for the purposes of the parties or their solicitors inspecting the same, and taking copies thereof, and which copies, if desired, are made by them. They also attend the several courts and examiners with

If he be allowed to prove, will he be allowed to receive the dividends, or what will be done respecting them?

Is there any difference if he be not sole trustee or executor, but individually indebted?

Creditors.

Is priority allowed to any class of creditors: and if so, to what class and extent?

CRIMINAL LAW, AND PROCEEDINGS BEFORE JUSTICES OF THE PEACE.

Nature of Crimes.

What is the difference between a civil injury and a public crime?

Are any persons whatever incapable of committing, or excused from the guilt of crime? If there are any, state whom they are, or some of them.

What is the highest civil crime that any person can commit?

Can words alone spoken amount to high treason?

What acts constitute the crime of arson?

Principal and Accessory.

What is the difference between a principal in an offence and an accessory?

Are there any offences which do not admit of accessories? If any, state what they are.

Proceedings.

What remedy has a party for a civil injury sustained by him? Would it be by action or indictment?

In what cases must the remedy by indictment be resorted to?

When a person is committed by a magistrate for trial, what is the next step to be taken with a view to bring the committed person to trial?

What is the difference between a grand jury, and a petty jury? and what are their respective duties?

Riots.

What is the crime that riotous persons incur who continue together after they have been legally commanded to disperse?

How many persons unlawfully assembled to the disturbance of the peace, will constitute a riotous assembly?

Who may by act of parliament command such persons to be dispersed? and what course must be pursued legally to effect that object?

Punishment.

Enumerate all the offences which are at the present time punishable with death.

such deeds, &c., pursuant to the orders of the Court."

These humble offices of care and attention may be readily performed by the subordinates of the record keeper.

"They attend the Courts with infants and the proposed guardians, to obtain the directions thereof for the appointment of such guardians, first informing themselves and the Court that the interest of the infants and the proposed guardians do not clash, and that the latter are otherwise fit persons for the trust."

This duty should evidently be discharged by the solicitors in the cause, acting, when necessary, through their counsel, and both of course being responsible for the due adherence to the practice of the Court.

"They have the custody of the records of all bills to which appearances are entered, until answers are filed thereto, or the time arrives at which the same are to be transmitted to the record room, according to the course of the Court."

This is clearly the business, not of a person acting as the agent of the suitor and solicitor, but of an officer of the Court.

"Before an answer is filed without oath or signature, they must peruse the same, and see that no admission is stated therein to the prejudice of the defendant, as a check against the consequences which have heretofore ensued by reason of defendant's having had such improper answers put in without their knowledge."

How can the Clerk in Court know the interests of the parties? They are known only to the solicitor, and he, aided by the learning and judgment of counsel, is the proper person to perform this duty.

"The Sworn Clerk is entrusted by the Court with issuing attachments and other processes of contempt, for the regularity of which proceedings he is responsible. It is therefore his duty to be extremely cautious before he takes away the liberty of the subject; and as far as lies in his power he must be careful that the party or his solicitor do not wantonly or vexatiously abuse such process, which is frequently a difficult task."

"When an attachment issues for want of the defendant's appearance, or for not obeying a writ of execution, the Sworn Clerk must carefully inspect the affidavit upon which such attachment is grounded, and observe that the same is sufficient, and that the service of the previous process has been strictly regular, according to the orders and practice of the Court; and here it must be noticed that such affidavits are in general so very imperfect, and the services of the process of subpoena and writs of execution so frequently irregular, that more than one half of the attachments demanded are necessarily rejected until the irregularities are corrected. When the service is regular, and the affidavit is perfect, the Sworn Clerk

files it in the affidavit office, makes out the writ, enters it in his book, makes out the proper præcipe for the registrar, and attends him therewith to procure his entry thereof, and sends the writ to the Lord Chancellor to be sealed."

We do not wonder that Mr. Jackson should describe this as a difficult task. It is one, indeed, which the clerk in Court cannot perform. He can no more restrain an improper attachment than an officer of the Common Law Courts can prevent an improper arrest. The clerk of the writ department must require the proper evidence for issuing the writ, and more cannot be given consistently with the rights of the subject.

"There are no written consolidated general rules or orders containing the practice of the Court, nor is there any book of practical authority which can be depended upon; but on the contrary all the books of practice, although correct in many points, yet in others most grievously mislead the practitioner who has the hardihood to trust to their dicta.^a The practice of the Court rests either upon the known custom of its application upon acts of parliament and general orders, or upon cases decided from time to time by the Court; and of this practice in all its various details and applications, the sworn clerks, from their immediate connexion with the Court, and their constant and undivided attention to it (none of them practising in any other) and for the other reasons before stated, must be expected to have an extensive knowledge; and when it is considered that there are about 2300 solicitors in London, and nearly as many in the country, a very small portion of whom are acquainted with the practice of the Court in all its branches, and not one of whom it is probable can have conducted a cause through every stage of proceeding which may occur, it necessarily follows that there is scarcely one solicitor in London who does not have frequent or occasional recourse to the Sworn Clerks for any material practical information as he proceeds in a cause, which, if mistaken, not only tends to serious injury of the suitor's rights in his cause, but is also attended with great expence in costs, and as the Sworn Clerks also frequently give advice as to the conduct of suits, it must be evident that a very considerable part of their time is consumed thereby, and for which particular duties they receive no emolument or fee. It is therefore a great desideratum that the Court do cause its rules of practice (as far as the same are capable of being ascertained) to be drawn up and printed and published, for it is incalculable how much of the time of the Court, its counsel, officers, and solicitors, would be saved by such an act."

The recommendation with which this state

^a Since this evidence was given by Mr. Jackson, the profession has had the advantage of the valuable books of practice of Mr. Sidney Smith and Mr. Daniel.

most essential;—that of publishing a collection of the rules of practice,—would cure the evils complained of, and enable the solicitor better to discharge his duty. It cannot be considered as a wholesome state of things, that the practice should depend on traditional knowledge. Besides, the complete reform which is now going on in Chancery Practice, will render the peculiar knowledge of the Clerk in Court no longer useful.

“In consequence of the Sworn Clerks’ knowledge of the practice and established fees of the several officers and solicitors of the Court, they have, from the time they were first established, attended the Masters on the taxation of the several bills of costs in their respective causes, which is a duty of considerable trust and importance to the suitor, not easily executed, and requiring not a little discrimination and patient scrutiny, justly to apply the several authorized rules to each case, when it is considered that there are no less than seven degrees of costs, viz.

“*First*, costs, charges, and expenses, between client and solicitor, in the most enlarged view; *second*, costs, charges, and expenses, reasonably and properly incurred, affecting and to be paid out of an estate in which other persons are interested; *third*, costs between client and solicitor, to be paid out of an estate in which other persons are interested; *fourth*, costs between party and party, out of an estate; *fifth*, personal costs; *sixth*, costs out of purse; *seventh*, fixed costs; then follows the duty of assisting the masters, in apportioning costs, namely, in cases where it becomes necessary to ascertain how much belongs to the real estate, and how much to the personal estate, &c. &c. There are, also, costs occasioned by particular acts done by the parties, such as the plaintiff having brought improper parties before the court, or the defendant having set up an improper defence, &c. &c.; and here it should be noticed, that from inattention in settling the directions in the decrees or orders, the same are occasionally so very ambiguous, as to create much difficulty in determining the extent of costs intended by the court. The Sworn Clerks also attend the Masters on other occasions when required.”

We have shewn, over and over again, that the education of the Clerk in Court, though it fits him for taxing costs relative to ordinary proceedings, does not enable him to appreciate the services of the solicitor in special or unusual cases. Taxing officers should be appointed, devoted entirely to the duties of their office, and chosen from those most competent to do justice both to the suitor and the practitioner.

“That part of the Six Clerks’ Office, wherein the Sworn Clerks transact their business, is open during term time, from ten o’clock in the morning, till three in the afternoon, and from six to eight in the evening, holidays ex-

cepted; and from the last day of every term, until the second seal after Hilary term, the second seal after Easter term, and the fourth seal after Trinity and Michaelmas terms, this part of the office is open from ten in the morning till four in the afternoon, excepting on days appropriated for the services of notices of motions and petitions, when it is open from ten in the morning until three in the afternoon, and from six till eight in the evening; and from the second seal after Hilary term, to the last seal after the same term, and from the seal before each term to the first day of each term, from ten in the morning till three in the afternoon; and on the days of services of notices and petitions, from five in the afternoon till dusk. During all vacations it is open from ten in the morning till two in the afternoon, holidays excepted; and in cases of emergency, attendance is given, although out of office hours, or on holidays.”

The times of attendance, holidays, and vacations should be revised, and put on a reasonable footing, and made uniform at all the offices.

SUPERIOR COURTS.

Rolls.

PRACTICE.—STOP ORDER.—CONSTRUCTION OF THE NEW ORDER.

The order of April, 1841, relative to applications for preventing the transfer of funds, does not authorize the Court to dispense with the appearance of the party whose fund is sought to be affected, though he may have absolutely assigned his share, but only of those whose shares are not charged.

This was a petition presented by a party to whom a share in certain funds standing in the name of the Accountant General, and belonging to one of the parties in the cause, had been assigned; and it prayed that the share assigned might not be paid out without notice to the petitioner. In support of the petition, an affidavit was produced proving the execution of the assignment, which, it was contended on the part of the petitioner, was sufficient to entitle him to the order, without serving any of the parties entitled to the fund sought to be affected; but

The Master of the Rolls said it was not intended by the order of April, 1841, to dispense with service of the petition on the assignor, his being the share sought to be affected, and he must therefore appear.

Wood v. Viner, November 3d, 1841.

PRACTICE.—EXCEPTIONS TO REPORT.—PAYMENT OF MONEY INTO COURT.

The Court will order the payment into Court of a sum of money found due by the Mas-

ter's report, notwithstanding exceptions may have been taken to such report.

This was a suit instituted against certain trustees, for an account of monies received by them in the execution of their trusts, and the Master having reported a sum of 451*l.* to be due from them,

Pemberton now moved, on behalf of the plaintiffs, that such sum might be paid into Court to the credit of the cause.

Henthfield, in opposition to the motion, said, that in the present state of the cause, there being exceptions to the report, the order could not be made, although he admitted that if all the exceptions were allowed, the balance would not be varied.

The Master of the Rolls said, that it being admitted that if the exceptions were allowed, the balance would not be lessened, he should make the order.

Bridge v. Brown, December 13th, 1841.

Vice Chancellor of England.

PRACTICE.—REPORT.—CONTRUCTION OF 48TH ORDER OF AUGUST, 1841.

In preparing a report, under the 48th of Lord Cottenham's orders, so much of the evidence adduced before the Master as is sufficient to enable the Court to judge of the grounds upon which the Master came to his conclusion should be stated.

An order was made in this cause on the 3d of December last, for a reference to the Master to enquire and state how the hereditaments and premises in the petition mentioned were vested in the defendant William Hobart Rees, and whether he was an infant, and a trustee within the 1st W. 4, c. 60, (the Trustee Act), and if so, for whom. In pursuance of this order, the master made his report, dated the 18th December, 1841, and thereby, after referring to the various orders and reports made in the cause, and setting forth so much of an indenture of bargain and sale as showed the title of the parties, and also stating generally the effect of the several decrees and reports, he found that the said William Hobart Rees was an infant and a trustee within the meaning of the said act; but the report did not contain any of the recitals objected to in the 48th order. A motion being now made to confirm the report,

The Vice Chancellor, without hesitation, made the order.

Koe for the petition.

Rees v. Keith, December 20th, 1841.

Vice Chancellor Wigram.

EVIDENCE.—AGREEMENT.—STAMP.

Where secondary evidence is sought to be given of an agreement alleged to have been lost, the Court will presume that such agreement has been properly stamped.

The plaintiff and the defendant carried on business in partnership as attornies, until

March, 1830. By the deed of dissolution, certain arrangements were made as to two classes of debts, namely, those which were doubtful or bad, and those which were supposed to be good. A bill was filed, praying an account of the receipts since the dissolution, on the footing of the above deed. The defendant admitted the fact and the terms of this deed of dissolution, but alleged that in consequence of certain debts which had been considered and treated as good, turning out bad or doubtful, a subsequent agreement had been come to, by which the respective rights of himself and partner were materially altered; and he insisted that the account ought to be taken on the footing of both instruments. The alleged second agreement was not produced, but evidence was tendered to prove its loss; and secondary evidence of its contents was offered, but was objected to, on the ground that it must first be shown to have been properly stamped.

Mr. Temple and *Mr. Flather*, for the plaintiff. *Mr. Sutton Sharpe* and *Mr. Koe*, for the defendant.

His Honor took time to consider this and other points, and in delivering judgment referred to *Starkie on Evidence*, vol. 2, p. 770; *Phillips' Evidence*, vol. 2, p. 683; *Res v. Long Buckley*, 7 East, 45; *Crisp v. Anderson*, 1 Stark. Rep. 35; *Pooley v. Goodwin*, 4 Ad. & El. 94; *Res v. Castlemorton*, 3 Barn. & Ald. 588. He said the special circumstances of the cases in 7 East and 1 Starkie might perhaps explain the apparent caution with which *Mr. Phillips* had expressed himself; but the case of *Pooley v. Goodwin* left no doubt in his mind that the proof of a proper stamp was not a necessary preliminary to the admission of secondary evidence. The greatest injustice might ensue, if in the case of a lost agreement, the presumption of regularity were not raised in favor of the party claiming under it. The *onus* of proving the want of a stamp lays upon the party who raised the objection. His Honor then proceeded to enquire whether the loss of the agreement had been sufficiently proved, so as to let in the secondary evidence, and referred it to the Master to enquire what was the real nature of the document relied upon in the defendant's answer.

Hart v. Hart, Westminster, Nov. 9th, 1841.

Queen's Bench.

[Before the four Judges.]

WITNESS.—CO-DEFENDANT.

A defendant who has suffered judgment by default cannot be called by the plaintiff as a witness against his co-defendant in an action of contract:—he has an interest in the result of the cause, on account of his probably becoming entitled to call on his co-defendant for contribution.

Assumpsit by the administrator of one James Pipe, upon a bill of exchange, drawn by the defendants on, and accepted by, Messrs. Glyn & Co., for the sum of 100*l.*, payable to the or-

der of the drawer, and indorsed by them to the intestate. The defendant Steele pleaded, first, that he did not make the bill *nodo et furma*. He further pleaded that the defendants, before and at the time of the drawing of the bill, were in co-partnership as wine merchants, and that the defendant Harvey drew the bill without the knowledge or consent of Steele, and in fraud of the partnership, and against good faith, averring that the intestate had notice of the premises, and that neither the co-partnership nor Steele ever received any consideration for the bill. Issue on the first plea. To the second the plaintiff replied *de injuria*.

The defendant Harvey allowed judgment to go by default.

At the trial before Lord Denman, C. J., at the sittings after Easter Term 1840, after the defendant Steele had given evidence in support of his special plea, Mr. Erle, for the plaintiff, proposed to call the defendant Harvey in reply, citing and relying on the cases of *Brown v. Brown*,^a and *Worrell v. Jones*.^b This was objected to by the counsel for Steele, who contended that he was interested, as being entitled to contribution if the plaintiff succeeded in fixing a liability upon Steele. The Lord Chief Justice thought the witness admissible, and he was examined. The jury having returned a verdict for the plaintiff, a rule was obtained in the following term for a new trial.

Mr. Erle and Mr. Serjeant Manning shewed cause. The witness was admissible if there was a balance of interest, so that in reasonable probability his testimony would not be affected one way or the other. The mere circumstance of a party being a co-defendant will not, if he has suffered judgment by default, prevent him from being called as a witness in the cause (*Worrell v. Jones*); nor will the mere fact of his being a party to the record render his evidence inadmissible. *Nordin v. Williamson*.^c The Court, before rejecting him, must see that he has a decided interest in favor of the party who calls him, for if his interest is equally balanced, his testimony is receivable. Here he could not relieve himself from the consequences of the judgment he had suffered by fixing the other defendant.

Mr. Kelly and Mr. Gunning, in support of the rule.—This defendant was not admissible as a witness. He had a clear interest in favor of the plaintiff, for if he could establish the joint liability of his partner with himself, he would have a right to call on that partner for contribution, and to that extent would lessen his own liability; and he would lessen that liability as well with respect to costs as damages. The general propositions advanced on the other side are not disputed; but they are not applicable. *Worrell v. Jones*,^e is not an authority the other way, for there the person proposed to be called was the principal debtor, and

the defendants were merely his sureties, and by fixing them he could not obtain any right of contribution from them. *Mant v. Mainwaring*,^f shews that the co-defendant cannot be a witness for the plaintiff. But *Green v. Sutton*,^g is distinctly in point, and though that is only a *nisi prius* case, the question was very fully argued, and all the cases were considered. On the authority of that case this rule must be absolute.

Cur. ad. vult.

Lord Denman, C. J., after stating the facts of the case, and the question raised on the admissibility of the witness, said, that it amounted to this, whether such a defendant was interested. But that was the very question at issue on the record, and the defendant proposed to be called as a witness against his co-defendant, in a case like the present, had the most distinct interest to throw on his partner a joint liability, and thus diminish the amount of his own responsibility. In fact, he might have but little chance of doing so, but his interest lay in that direction, and his evidence was therefore inadmissible.

Rule absolute.—*Pipe (administrator of Pipe, deceased) v. Steele and Hurvey*, H. T. 1842. Q. B. F. J.

Queen's Bench Practice Court.

COSTS.—MASTER'S DISCRETION.—SEVERAL ISSUES.—TITHE COMMUTATION.

When a party is aware that evidence cannot be admissible under a particular form of issue, he is not entitled to the costs of preparing that evidence, although he may have reason to believe it is the intention of his opponent to endeavour to raise a question on which that evidence would be material.

In this case an issue had been directed pursuant to the Tithe Commutation Act, 6 & 7 W. 4, c. 71, to try a question with respect to the right of certain tithes. Among others a question arose with respect to the tithe calvea. Pursuant to the act notice was given on the part of the plaintiff, that it was the intention of that side to raise the question both with respect to the mode of taking the tithes, as well as the amount of them. When the cause came to be tried, it was objected on the part of the defendant, that as the issue was framed, the question as to the amount of the tithes could not be raised. Lord Denman tried the issue, and was of opinion that no evidence as to the value of the tithes was admissible on the part of the plaintiff. Accordingly no evidence was received, and the issue was disposed of in favor of the plaintiff. Afterwards, on taxation, it appeared that the defendant had subpoenaed a variety of witnesses, and was prepared with a quantity of documentary evidence on the question of the amount of the tithe. The ground of his so preparing himself was, that the notice of the plaintiff led him to suppose that the question with respect to the value was about to be litigated, although it would seem that

^a 4 Taunt. 752.

^b 7 Bing. 795.

^c 7 Bing. 395.

^d 1 Taunt. 378.

^e 7 Bing. 395

^f 8 Taunt. 169.

the issue as framed would not allow that question to be contested. A claim was made in respect of the costs of the witnesses, and the documentary evidence. The Master, however, refused to allow the costs of either.

Cresswell now moved for a rule to shew cause why that taxation should not be reviewed. It was true that the objection to go into the evidence with respect to the value was made by the defendant, but as notice had been given of the plaintiff's intention to raise that question, and as it might be doubtful whether the issue as framed would altogether exclude the contest as to the amount, the defendant was reasonably authorized to be prepared in the manner stated. The Master, by disallowing the costs in question, had been mistaken.

Wrightman, J., was of opinion that the Master had exercised a sound discretion in taxing the costs in the manner described. The defendant ought to be aware of the nature and form of the issue, and what evidence might be admitted under it. He had no right, therefore, to prepare evidence, and endeavour to make the plaintiff pay for it, when he ought to have known that it was inadmissible on the issue as then about to be tried. No rule must therefore go.

Rule refused.—*Fisher v. Berrell*, H. T. 1842. Q. B. P. C.

SERVICE OF WRIT.—SUMMONS.—ENTERING APPEARANCE.

Under what circumstances the Court will allow the plaintiff to enter an appearance for the defendant.

Ogle moved for leave to enter an appearance on behalf of the defendant under these circumstances: It appeared that the party endeavouring to effect service of the writ of summons, went to the house of the defendant, and there saw a person whom the deponent believed to be the wife of the defendant, and with her he left the copy of the writ of summons. At a subsequent period, the defendant came to the office of the plaintiff's attorney, and stated that he was anxious to settle the claim of the plaintiff on the defendant. The question then was, whether although the defendant had not been actually served personally with the writ of summons, the consent of the defendant must be considered, as shewing that the defendant had received intimation of the process, and therefore the plaintiff was in a situation to enter an appearance, pursuant to the statute, for the defendant.

Williams, J., thought an appearance might be entered by the plaintiff for the defendant, and granted a rule accordingly.

Rule granted.—*Anonymous*, H. T. 1842. Q. B. P. C.

JUDGMENT AS IN CASE OF A NONSUIT.—EXCUSE.

Want of funds is a sufficient excuse for not proceeding to trial according to the course and

practice of the Court; and if a rule for judgment as in case of a nonsuit has been obtained, it may, on that ground, be discharged, on giving a peremptory undertaking.

Hayward shewed cause against a rule for judgment as in case of a nonsuit, for not proceeding to trial according to the course and practice of the Court. The ground of not proceeding to trial was, that the plaintiff's circumstances had been in a bad state, and he had no means to proceed with the cause. His means had now improved, and he was in a situation to proceed to trial. For this purpose he was willing to give a peremptory undertaking to proceed to trial.

Huggins supported the rule, and contended that the want of means was not an adequate reason for not proceeding to trial in conformity with the practice of the Court. There was no reason, therefore, for the discharge of the rule on the terms proposed.

Williams, J.—I think that is a sufficient reason for not proceeding to trial. The rule must be discharged on a peremptory undertaking by the plaintiff.

Rule accordingly.—*Grunge v. Smith*, H. T. 1842. Q. B. P. C.

Common Pleas.

NOTICE OF DISHONOUR OF BILL OF EXCHANGE.

Notice of dishonour of a bill of exchange, given to the defendant G, by an occasional servant of the plaintiff uninterested in the bill, in which the bill was described as "due yesterday," and as being "signed L. C. and G.:" Held sufficient in an action by the indorsee against the indorser.

This was an action by the indorsee against one Green, charged as the indorser of a bill of exchange, drawn by one Thomas Cooper upon, and accepted by, one Lawford. At the trial before the under-sheriff of Middlesex on the 18th January, notice of dishonour was proved to have been given to the defendant by an occasional servant of the plaintiff, uninterested in the bill, in a letter in the following terms: "Sir, I beg leave to inform you, that a bill due yesterday signed Lawford, Cooper, and Green, is now lying unpaid at my residence, and I request your earliest attention to the same." It was objected, that the bill was not sufficiently described as "due yesterday," and "signed Lawford, Cooper, and Green," but the objection was overruled. Evidence was then given of a conversation between the same servant of the plaintiff and the defendant, in the course of which, the latter said that the parties to the bill were all respectable, and there was no doubt that it would be paid. A verdict was returned for the plaintiff.

Mr. Serjt. Chunnell now moved to set that verdict aside, and to enter a nonsuit, urging the same objections which had been raised upon the trial.

Tindal, C. J.—The objections cannot prevail. The description of the bill is sufficiently distinct and clear, and the service of notice by

the servant of the plaintiff is quite enough, although he was uninterested in the bill, for he was constituted the agent of the plaintiff for that purpose.

Rule refused.—*Etheridge v. Green*, H. T. 1842. C. P.

ENLARGEMENT OF RULE.—DISOBEDIENCE OF TERMS.

Where a rule has been enlarged upon certain terms, the Court will not dispense with them without some special reason being assigned, or without the consent of the opposite party.

This was a rule nisi for judgment as in case of a nonsuit, obtained on behalf of the defendant in Michaelmas Term. Upon the application of the plaintiff, the rule was enlarged until this term, it being made a part of the rule for the enlargement, that any affidavit intended to be used on shewing cause, should be filed one week before the first day of term.

Mr. Serjt. Ludlow now moved to make the rule absolute.

Mr. Serjt. Stephen shewed cause, and produced an affidavit, which, however, had not been filed. He submitted, that the neglect having arisen in consequence of some mistake on the part of the attorney in the country, the Court would further enlarge the rule for a week, so as to place the defendant in the same position in which he ought to have stood with regard to the affidavit.

Tindal, C. J.—That may be done if the defendant consent; but otherwise I cannot help you, unless for some special reason.

Rule absolute.—*Cosby, v. Betts*, H. T. 1842. C. P.

NEW TRIAL.—UNDEFENDED CAUSE.—AFFIDAVIT OF MERITS.

The defendant's attorney having been served with notice of trial for the first sittings, mistook it for the sittings after term, and the cause was taken as an undefended cause. Upon an application for a new trial, it was sworn that about a week before the trial, the defendant was informed by the plaintiff's attorney's clerk, that the cause was to be tried "next week." The clerk to the defendant's attorney avowing that the defendant had informed him that "he had been advised by counsel that he had a good defence on the merits, which the deponent verily believed to be true." The Court, under such circumstances, refused to grant a new trial.

This was an action of trover, in which the defendant pleaded, first, that the plaintiff was not possessed; and secondly, a denial of the conversion.

Sir T. Wilde, Serjt, shewed cause against a rule for a new trial, and urged that the case was one of palpable negligence on the part of the defendant's attorney, in which the Court would leave the defendant to his remedy against his legal agent. He cited *Breach v.*

Casterman, 7 Bing. 224; 4 Mo. & P. 867; *Gruitt v. Crawley*, 8 Bing. 144; 1 Mo. & Scott, 229.

Mr. Serjt. Talford, in support of the rule. *Tindal, C. J.*—This is not a case, in which, in conformity with the decisions which have been cited, we can grant a new trial. First, there is gross and palpable negligence on the part of the clerk to the defendant's attorney in mis-reading the notice of trial; and, secondly, there is the circumstance of a conversation with the defendant, in which the date of the trial was alluded to; while, thirdly, there is the service both on the defendant and his attorney of the notice to produce two days before the trial. This, it is to be observed, all occurred at the beginning of the term, and could hardly have taken place with regard to a cause to be tried after term. It would require a very clear affidavit of merits to induce us to interfere in such a case, but the affidavit here is very unsatisfactorily sworn.

Rule discharged.—*Nash v. Swinburne*, M. T. 1841. C. P.

In the Exchequer of Pleas.

ATTORNEY'S LIEN.—SETTLEMENT OF ACTION.

A party has a right to settle his action apart from his attorney, and in order to invalidate the arrangement, it must be shown affirmatively that there was collusion between the parties and an intention to deprive the attorney of his costs. Where the arrangement is suggested between the parties themselves, and the attorney for the defendant, upon being afterwards consulted, approves the arrangement, and at the request of his client, prepares the necessary release to be executed by the plaintiff, he does not by so doing improperly mix himself up with the transaction.

This was a rule calling on the defendant to shew cause why the plaintiff's attorney should not be at liberty to tax and recover his costs, notwithstanding any pretended settlement which had been made between the parties. The action was tried at the last Somersetshire assizes before Mr. Baron Rolfe: verdict for the plaintiff, damages 50*l.* It appeared from the affidavits that the defendant, who was dissatisfied with the verdict, had instructed his attorney to move for a new trial, and that the plaintiff had entertained considerable apprehension as to the result; notwithstanding which, the plaintiff's attorney had expressed a determination, contrary to the wishes of his client, to prosecute a further action against the defendant at the suit of the plaintiff and his wife, arising out of the same transaction, and depending upon the same evidence. The plaintiff, with a view of preventing further litigation, proposed an arrangement with the defendant, and it was ultimately agreed that the defendant should pay to the plaintiff 50*l.*, and that the plaintiff should thereupon release the defendant from all liability in respect of the present action, and of all other claims.

The defendant's attorney, upon being consulted by his client, approved of the proposed arrangement. He also, at the request of his client, prepared the necessary release, and advised that its execution should be attested by two or three respectable witnesses, but he refused otherwise to mix himself up with the matter. The release was duly executed, and this rule was in consequence obtained by Mr. *Kelly*.

Erle, Q. C., and *Pridoux*, shewed cause.—This rule must be discharged. The action is the action of the plaintiff, and not of the attorney, and the parties may, if they please, settle an action themselves. In order to invalidate the transaction, it must be shewn clearly and affirmatively, that it was effected by collusion and with a view of depriving the attorney of his costs; mere suspicion is not sufficient. *Jordan v. Hunt*, 3 Dow. 666; *Nelson v. Wilson*, 6 Bing. 568. But this was a fair and beneficial arrangement, evidently desired by the plaintiff, who feared that he might ultimately be unsuccessful in the action, and was anxious to avoid further litigation. With regard to the release, which was intended to operate, not only in discharge of the present demand, but also as a protection against future claims; the defendant's attorney was fully justified in preparing it, and would have been deficient in duty to his client if he had refused.

Kelly, Q. C., and *Butt, contra*, admitted the general principle that a party may settle an action without the intervention of his attorney, provided there was no intention to defraud him of his costs, but contended that the fair inference in this case was, that there was such an intention. This case differed materially from those which had been cited. In those cases the cause was in progress, whilst here it had proceeded to a verdict, and the attorney did not venture to swear that he expected a new trial. In this case the attorney for the defendant was mixed up with the transaction, and as he must have known that the effect of the arrangement would be to deprive the plaintiff's attorney of his costs, the Court must infer that there was a collusive intention to effect this object. *Swayne v. Senater*, 2 B. & P. 99.

Abinger, C. B.—This rule must be discharged, on the grounds relied upon by the learned counsel who followed Mr. *Erle*, namely, *first*, because a party has a right to settle his action himself, and in order to invalidate the arrangements, it must be made to appear affirmatively that there was collusion against the attorney. The Court cannot infer fraud, and deprive a party of his right to settle his action upon mere suspicion; and *secondly*, because the defendant's attorney was not improperly mixed up with the transaction. Indeed the arrangement appeared to have been a very proper one under all the circumstances, for there can be no doubt that the defendant intended to move for a new trial, (which intention it may be observed, brings the case within the principle of *Jordan v. Hunt*, and *Nelson v. Wilson*, as to the cause being in

progress at the time,) and in all probability he would ultimately have succeeded.

The rest of the Court concurred.

Rule absolute, without costs.—*Ricketts v. Nash*, H. T. 1842. Exch.

Queen's Bench.

Hilary Term, 5 *Vic.* 1842.

This Court will, on Tuesday the 1st of February next, and four following days, hold sittings, and will proceed in disposing of the business now pending in the SPECIAL and NEW TRIAL PAPERS, and giving judgments in pending cases.

The Court of Queen's Bench will, on Tuesday the 1st day of February next, proceed in disposing of the following list of cases, selected from the Special Paper, viz.,—*Timbrell v. Cooper*, *Plume v. Hodson*, *Jones v. Corbett*, *Nathan v. Lloyd*, *Sprigge v. Shinn*, *Williams v. Perkins*; and immediately after disposing of them, the Court will proceed with the NEW TRIAL PAPER, and give judgment in pending cases from time to time, on that and the four following days.

26th Jan. 1842.

The Court will on the four last days of term, take MOTIONS, and if on any of those days (including the last day of term), motions fail before 4 o'clock, the Court will proceed with the NEW TRIAL PAPER.

RESULT OF THE EXAMINATION.

It appears that 108 candidates for admission as attorneys, attended at the Law Society on Tuesday last, the 25th instant, two having been added to the number on the morning of the Examination, under special circumstances. The result, we understand, has been that 102 were passed, and six deferred.

THE EDITOR'S LETTER BOX.

We have obtained some information beyond that stated at p. 216, *ante*, regarding the Courts selected by the new Queen's Counsel, but expect to collect the full particulars by the end of the Term.

We think the signature in the form given by "Philipus" would be sufficient.

The cases stated by "Nemo" and "A Subscriber" shall be considered.

The charges allowed by the taxing officers in common law, as between "attorney and client," which have been taxed off as between "party and party," are such items of business, attendances, &c. as were necessary and proper for the better security of the client, though not chargeable to the opposite party.

The letters of W. M., and "Spec" have been received.

The Legal Observer.

MONTHLY RECORD FOR JANUARY, 1842.

—“Quod magis ad nos
Pertinet, et nescire malum est, agitamus.”

HORAT.

SUMMARY OF RECENT DECISIONS IN THE SUPERIOR COURTS.

We now proceed with our periodical Digest of Cases reported in the Legal Observer, and it will be seen that we have referred to other Cases bearing on the points decided, and reported in other works,—a course which we trust will be found useful to the Practitioner.

ATTORNEY.

1. In answer to a declaration in *assumpsit* for work and labour as an attorney, the defendant pleaded, that as to — *l. parcel*, &c. the alleged causes of action accrued to the plaintiff in the character of a solicitor, and that “at the time of the accruing of the alleged causes of action,” &c. “the plaintiff was not a solicitor duly admitted and enrolled in that behalf, and that he was not duly qualified according to the act: Held bad on special demurrer, for duplicity and uncertainty. *Williams, gent., v. Jones, gent.*, 23 L. O. 141.

And see *Humphreys v. Harvey*, 1 Bing. N. C. 62; 2 Dowl. P. C. 827; *Eyre v. Shelly*, 6 Mee. & W. 269; *Webb v. James*, 9 Dowl. 314; *Rothery v. Memmings*, 1 B. & A. 15; *The King v. Lyme Regis*, Doug. 79.

2. An attorney, to whom an articled clerk had served the usual period of five years, had the articles deposited with him, and subsequently absconded. The Court afterwards admitted the clerk without the production of the articles, on production of an affidavit of the search to find the articles being unsuccessful, and a certificate of enrolment. *Ex parte Nicholls*, 23 L. O. 127.

BANKRUPTCY.

1. The statute 2 & 3 Vict. c. 29, has not the effect of rendering valid a *fi. fa.* issued on a judgment signed on a warrant of attorney; such execution having been executed by seizure after a secret act of bankruptcy, but not completed by sale of the effects before the issuing of the fiat. *Whitmore v. Robertson*, 23 L. O. 95.

2. Two partners, before their bankruptcy, gave mortgages to their creditor to secure payment of a partnership debt, and covenanted jointly and severally for the payment of the debt: Held, that the creditor has a right to prove the whole debt against the separate estates, and to receive dividends from them, without first realizing the joint security. *In re Plummer and another*, 23 L. O. 122.

See also *Ex parte Parr*, 1 Rose, 76; 18 Ves. 65; *Ex parte Peacock*, 2 Gl. & J. 27; *Ex parte Connell*, 3 Deac. 201.

COSTS.

1. A solicitor, before he undertakes to defend a person against a commission of lunacy, is bound (where he has obtained the sanction of the Court) to see that he has a retainer from that person, and that he was competent to retain him, in order to be entitled to his costs, if he is found a lunatic. But if he acts *bona fide*, although he may be mistaken as to the party's competency, the Court will order his costs to be paid. *In re Taylor, a lunatic.* (Lord Chancellor) 23 L. O. 58.

2. The Court will not, after verdict and judgment in an action of trespass, interfere to compel a person who is not a party to the record, to pay costs upon affidavits which shew that he is the real party interested, and that the party on the record is a merely nominal party to the suit. There should have been, in the first instance, an application for security for costs. This kind of interference is confined to cases of ejectionment. *Evans v. Rees*, 23 L. O. 125.

See *Doe d. Masters v. Gray*, 10 B. & C. 615; *Hayward v. Gifford*, 4 Mee. & W. 194; 6 Dowl. 699; *Blewitt v. Tregoning*, 5 Dowl. 404; *Thrustout d. Jones v. Shenton*, 10 B. & C. 110; *Doe d. Wright v. Smith*, 3 Dowl. 517; see also *Mansel's Costs*.

3. Where a plaintiff, after filing his bill, leaves this country for Canada, he will be required to give security for costs, although he may have expressed his intention of proceeding there only for a particular purpose, and of returning as soon as that purpose is accomplished. *Snook v. Duncan*, 23 L. O. 91.

See *White v. Greathead*, 16 Ves. 2.

4. Where it is sought to deprive a plaintiff of his costs, by reason of his not having obtained the certificate of the judge who tried the cause, of his approbation of the action and the verdict under the provisions of the 10 G. 4, c. 44, s. 41, (the Police Act) it being suggested to be an action brought against the defendant, a police officer, for a thing done in pursuance of statute, the Court will refer to the notes of the judge to see whether it is an action so brought.

Quere, whether the object should be effected by a suggestion upon the record, or by motion to review the taxation of costs. *Semble*, that such a suggestion cannot be traversed. *Bartholomew v. Carter*, 23 L. O. 202.

See *Barilet v. Peatland*, 1 B. & Ad. 704; *Oakes v. Albin*, 13 Price, 794; *Fleming v. Davies*, 5 D. & R. 371; *Baldon v. Pitter*, 3 B. & Ald. 210; *Robinson v. Vickers*, 1 Chit. Rep. 636.

CREDITOR.

A bond creditor is not obliged to apply the dividends he receives from the estate of one of the obligors, a bankrupt, in discharge of principal, until all the arrears of interest have been paid; and he is therefore entitled to receive his balance under a decree for the administration of the estate of the co-obligor. *Bower v. Morris*, 23 L. O. 138.

And see *Ex parte Higginbottom*, 2 Gl. & J. 123; *Bromley v. Goodeve*, 1 Atk. 75; *Ex parte Morris*, 1 Ves. jun. 132; *Ex parte Mills*, 2 Ves. jun. 295; *Butcher v. Churchill*, 14 Ves. 534; *Ex parte Dee*, 2 Bos. & P. 213; *Paley v. Field*, 12 Ves. 435; *Bardwell v. Lyall*, 7 Bing. 489; *Raikes v. Todd*, 8 Ad. & Ell. 846; *Ex parte Holmes*, 8 Law Journ. 33.

2. A suit instituted for the administration of a testator's estate, will not be allowed to proceed after a decree has been obtained in another suit for the same purpose, at the instance of a creditor of the testator, although, in consequence of the time for answering having expired in the first suit the solicitor who filed the bill in the second suit, may have given an undertaking to put in the answer in the first suit within a specified time. *Roberts v. Williams*, *Weeks v. Williams*, 23 L. O. 196.

EJECTMENT.

1. Upon an application for judgment against the casual ejector, in an action of ejectment under the statute 4 G. 2, c. 28, an affidavit under sect. 2, made by the landlord, "that he had been informed, and verily believed that there was no sufficient distress on the premises," was held insufficient. *Doe d. Hicks v. Roe*, 23 L. O. 128.

2. Where the title of the declaration is wrong, and there is no date to the notice, so as to inform the tenant when he is to appear, judgment against the casual ejector will not be allowed to be signed. *Doe d. River v. Roe*, 23 L. O. 174.

3. Where there are several lodgers in a house, and service of a declaration cannot be effected on them, it may be served on the person keep-

ing the house. A declaration in ejectment was served on a daughter of the tenant in possession on the premises, accompanied by the usual reading and explanation previous to the same.

After the term had commenced the daughter made an acknowledgment that she had given the declaration to her father, and the Court held the service to be sufficient for a rule nisi for judgment against the casual ejector. *Doe d. Threader v. Roe*, 23 L. O. 174.

4. Where a warrant of attorney is given in an action of ejectment, it is not requisite that an attorney should attest the execution of the instrument pursuant to the directions of 1 & 2 Vict. c. 110, s. 9. *Doe d. Kingston v. Kingston*, 23 L. O. 201.

INDICTMENT.

1. If an application is made on behalf of the prosecution to quash an indictment on account of the Court not having jurisdiction, the rule is absolute in the first instance. *Re v. —* 23 L. O. 93.

2. In a prosecution for a misdemeanor, where the verdict is for the defendants, there cannot be a new trial. But the Court may suspend the judgment till a new indictment has been preferred.

Where a road was proved to have been used by the public above forty years as a cart road, and long before that time as a pack horse road (before carts were known in that part of the country), the judge left it to the jury, whether there had been an actual dedication of it to the public, as without such a dedication the parish could not, since the 5 & 6 W. 4, c. 50, be liable for repairs: Held, that this was a misdirection. *The Queen v. The Inhabitants of Chalkicombe*, 23 L. O. 197.

See *Gregory v. Papp*, 1 Crom. M. & R. 310; 1 Starkie's Evid. 665.

INFANTS.

1. Where a Catholic testamentary guardian, enjoined by the testator to educate his child in the Roman Catholic faith, allows the infant to be brought up in the Protestant religion until the age of fifteen, a Court of Equity will, upon the petition, and after a personal examination of such infant as to his religious opinions, decree that he should continue to receive Protestant instruction, and to be sent to a Protestant seminary. *Witty v. Marshall*, 23 L. O. 124.

2. The order which allows a plaintiff to file a note at the Six Clerk's Office, in case the defendant shall not have filed a plea, answer, or demurrer, within the time limited by the rules of the Court, does not apply to infant defendants. *Emery v. Newsome*, 23 L. O. 140.

JOINT STOCK COMPANIES.

A. being possessed of a share in a public company, and being indebted to B., sent a letter containing the following words: "I will deliver the share on demand, having received 600*l.* for the same." Held, that this letter imported a past consideration, but required a

demand for the delivery of the share to be made before an action was maintainable on the promise. *Greek v. Murray*, 23 L. O. 172.

LEASE.

Where a lease has become the property of a party, as part of the stock of a partnership in which he was interested, and he afterwards receives rent for the property, and pays the ground rent; he is liable to any claim that may be made under the covenants in the lease for delapidations, or for holding over, although no actual assignment was ever executed to him. But the claim being in the nature of a simple contract debt, must be pursued within six years after the expiration of the lease. *Saunders v. Benson*, 23 L. O. 123.

See *Close v. Wilberforce*, 1 Beav. 112; *Moore v. Choat*, 8 Sim. 508; *Stockhouse v. Barnston*, 10 Ves. 453; *Lucas v. Comerford*, 3 Bro. 166; *Jenkins v. Portman*, 1 Keen, 435.

LIBEL.

In an action of libel, where the words are not libellous of themselves, and where the imputation supposed to be conveyed by them, is one of which the Court cannot take judicial notice, the declaration must clearly allege the matter in respect of which the written words are deemed libellous; and the want of such allegation cannot be legally supplied by proof at the trial; nor if such proof be given, can the verdict founded upon it be sustained. *Hearn v. Stowell*, 23 L. O. 198.

See *Clegg v. Laffer*, 10 Bing. 250; *Digby v. Thomson*, 4 B. & Ad. 821; *Fisher v. Clement*, 10 B. & C. 472; *Gardner v. Williams*, 2 C. M. & R. 28; *Parmeter v. Copeland*, 6 Mee. & W. 105; *Forbes v. King*, 1 Dowl. 672; *Ayre v. Craven*, 2 Ad. & El. 2; *Goldstein v. Foss*, 6 B. & C. 154; *Sweetapple v. Jesse*, 2 Nev. & M. 36; 5 B. & Ad. 27.

MANDAMUS.

This Court will not grant a *mandamus* to compel a man to do an act *in futuro*. Therefore, though the 2 & 3 Vict. c. 41 (Scotch Bankrupt Act) enacts, that in cases of bankruptcy, the Scotch Courts may make an order, "that for a period not exceeding three months from the date of the order, all letters addressed to the bankrupt shall be delivered by the Postmaster General to the factor or assignee of the bankrupt's estate, and though such an order had been made and served on the Postmaster General, and he had refused to obey it, this Court, on the ground that it was an act to be done at a future time, refused to interfere by *mandamus*. *Ex parte Hall, in re Arthur Strahan's Bankruptcy*, 23 L. O. 217.

See *Meiselles v. Banning*, 2 B. & Ad. 909.

MORTGAGE.

1. Where a mortgage account has been settled in error, and the deeds have been handed over without the mortgagor's satisfying a sum charged upon them by way of equitable lien, the Court has power to rectify the mistake,

and the amount claimed being a charge upon land, will not be barred by the statute of Limitations. *Alington v. Pain*, 23 L. O. 170.

See *East India Company v. Neave*, 5 Ves. 173; *Same v. Donald*, 9 Ves. 275; *Ex parte Morgan*, 12 Ves. 6; *Gregory v. Bessell*, 6 Mad. 186; *Broockhurst v. Jessop*, 7 Sim. 438; *Higgins v. Scott*, 2 B. & A. 413.

2. A tenant for life of certain estates which had been mortgaged, having brought his action against the party entitled to the fee, after the determination of the life estate, to recover possession of some of the deeds relating to the same estates, it was held that the Court could not interfere, although an offer was made for delivering up the deeds to the mortgagee, or depositing them in Court. *Bassett v. Bassett*, 23 L. O. 92.

3. A mortgagee who obtains a decree for sale and payment of his mortgage debt and interest, is entitled to compound interest from the confirmation of the Master's report finding the amount due to him; but not if he has filed the bill on behalf of himself and all other the specialty creditors of the mortgagor. (*Master of the Rolls*.) *Stranger v. Morley*, 23 L. O. 43. And see *Wharton v. Craddock*, 1 Keen, 269.

PLEADING (COMMON LAW).

1. The plaintiff declared in case against the Great Western Railway Company, and alleged that the defendants so negligently managed their steam engine, that sparks of fire flew from the engine upon a stack of beans, and the same was burned. The stack was eleven yards from the railway: Held, that there was evidence of negligence, and that the defendants were not entitled to a nonsuit, and that the case must therefore be tried by a jury. *Aldridge v. The Great Western Railway Company*, 23 L. O. 202.

2. Where an indorsee of a bill greatly over due, and upon which payment could not be obtained from the acceptor, sues the drawer, who, since the date of the bill, has been discharged under the Insolvent Act, and who has inserted it in his schedule, a bill filed to have the bill delivered up, and to restrain proceedings at law, is not generally demurrable upon the ground of valuable consideration not having been given for such bill, the non-payment by the acceptor, and a defence at law; but a demurrer *ore tenus* will be supported on the ground that the assignees are not parties. *Balls v. Strutt and others*, 23 L. O. 197.

3. The plaintiff declared in a county court for 17. 9s. 6d., and by the particulars a balance of 17. 18s. 8d. was claimed, the original debt stated being 37. 11s. 6d., and credit being given for 17. 12s. 10d.: Held, that although the declaration, if the parties could be called in aid to explain its meaning, might be taken to claim less than 40s., yet that the particulars could not be so taken as affording an explanation as to the amount of the demand, and the declaration was bad in the county court as demanding more than 40s.: Held also, that the plaintiff intending to declare for the balance of a debt originally exceeding 40s., but reduced in

amount by payments, should have set out the original debt, and have given credit for the sums paid, reducing it below 40s. *Dempster and another v. Padnell*, 23 L. O. 175.

See *Middleton v. Hobson*, 6 B. & C. 295; *Lord v. Houstam*, 11 East, 62; *Moravia v. Soper*, Willes, 30; *Tilley v. Foxall*, ib. 688; *Booth v. Howard*, 5 Dowl. 438.

PLEADING (EQUITY).

1. Where a plaintiff, after the defendant's answer is put in, so alters the frame of his bill, as to make an entirely new case, and a material portion of the answer as well as of the bill is thus rendered useless, the Court will order him to reimburse the defendant the costs incurred by him for so much of the proceedings as is thus rendered useless. *Secus*, if the amendments are occasioned by statements in the answer of circumstances then first known to the plaintiff. (*Vice Chancellor of England.*) *Dyson v. Morris*, 23 L. O. 60.

See *Bullock v. Perkins*, 1 Dick. 110; *Mavor v. Dry*, 2 S. & S. 113.

2. Where a defendant, by his plea and answer, submits to an original bill, which was multifarious, he cannot afterwards demur generally upon this ground. *Slade v. Slade*, 23 L. O. 141.

See *Ellice v. Goodson*, 3 M. & Cr. 653; *Prosser v. Edmonds*, 1 Y. & C. 481; *Ritchie v. Aylwin*, 15 Ves. 30; *Pearce v. Hewett*, 7 Sim. 471; *Stephens v. Frost*, 2 Y. & C. 297.

3. A bill for an injunction to restrain parties from erecting a nuisance, filed in the names of several persons as co-plaintiffs, all having distinct interests, cannot be sustained, although the object sought to be accomplished by each may be the same. *Hudson v. Muddison*, 23 L. O. 195.

See *Cowley v. Cowley*, 9 Sim.; *Jones v. Garcia del Rio*, Turn. & R. 297; *Sampson v. Smith*, 8 Sim. 272.

PRACTICE, (COMMON LAW).

Arrest of Judgment.—If a writ of error is tendered to the officer of the Court for allowance, he has no discretion as to allowing it or not, but is bound to allow it, as the writ of error is a matter of common right, issued out of Chancery, and the Court cannot set aside the allowance. *Boreman v. Brown*, 23 L. O. 94.

Capias Utlagatum.—Where the return to a special writ of *Capias Utlagatum* was insufficient, the Court, upon the application of the judgment creditor and the sheriff, directed it to be quashed. *Engler v. Annesley*, 23 L. O. 94.

Distringas.—1. Where attempts have been made to serve the defendant with a writ of summons at his "warehouse," which were unsuccessful, and the servant of the defendant, upon being asked where the defendant's residence was, said it was at Peckham, but refused to give any further information, the Court granted a *distringas*, although no further efforts to discover the residence of the defendant were sworn to. *Elburne v. Marshall*, 23 L. O. 94.

2. The usual number of calls and appoint-

ments having been made in order to obtain a *distringas* to compel appearance, the Court will grant that writ, if it appears that at the time the servant of the defendant denies his master to be in town, the defendant is in town, and in the neighbourhood. *Hodgson v. Count D'Oraay*, 23 L. O. 218.

3. Where it is sought to compel an appearance by a *distringas*, the affidavit for that purpose should state the residence of the defendant, as well as the facts which it is suggested, shew the defendant to be keeping out of the way to avoid service. *Bradbee v. Gustard*, 23 L. O. 200.

Judgment as in case of a nonsuit.—1. If a defendant has become insolvent since the joinder of issue, and put the debt in question in his schedule, it is a sufficient ground for not proceeding to trial according to the practice of the Court; and if a rule for judgment as in case of a nonsuit has been obtained, the Court will discharge it without costs. *Gray v. Brett*; 23 L. O. 127.

2. A peremptory undertaking may be enlarged, where it appears, that since it was given, a material and necessary witness has been convicted of felony, and will not be discharged from custody previous to the time at which it was proposed to try. *Anonymous*, 23 L. O. 218.

3. If a plaintiff and defendant have settled an action by the payment of debt and costs, the Court will discharge a rule for judgment as in case of a nonsuit, obtained by the defendant after such settlement, but will not discharge it with costs, unless it is shewn clearly on the part of the plaintiff that it did take place before the rule was obtained. *Paseford v. Collins*, 23 L. O. 201.

4. Where a rule for judgment as in case of a nonsuit has been obtained, and it appears that the defendant has disposed of his property since the joinder of issue, and declared his intention to go to prison if he failed in the action, the Court will discharge the rule with costs, unless the defendant consents to a *stet processus*. *Yates v. Trott*, 23 L. O. 200.

Notice of Declaration.—In a case, where the notice of declaration described the form of action as in debt, while the writ and declaration were on promises, it was held, that taking the declaration out of the office by the defendant, waived the objection. *Heywood v. Frazer*, 23 L. O. 199.

Outlawry.—Notwithstanding the general rule is, that an outlaw cannot be heard in Court, except for the purpose of reversing the outlawry against him, where he has been taken into custody on a writ, as it is suggested wrongfully against him, he may be allowed to apply to obtain his discharge, and if the proceedings pursuant to which the defendant has been made a prisoner are irregular, the Court will discharge him. *Walker v. Thelluson*, 23 L. O. 143.

Paper Books.—Where, on an argument on a writ of false judgment being called on in the special paper, it appeared that the defendant in error had delivered the paper books on the

plaintiff's default; and the plaintiff refused to pay any share of the cost of those books, the Court compelled the payment of the costs before the argument; although writs of false judgment are not by description included within the terms of the rules of H. T., 4 W. 4, s. 7. *Dempster v. Parnell*, 23 L. O. 94.

Service of rule.—1. If the master has allowed a certain sum as costs by his allocatur in an action of ejectment, and the party against whom the allocatur is made cannot be served personally, the rule for an attachment cannot be granted; but the party in whose favour the allocatur is made may obtain a rule for payment of the money, pursuant to 1 & 2 Vict. c. 110. *Doe d. Steer v. Bradley*, 23 L. O. 173.

2. A service of a rule to compute was effected on a person at the house of the defendant, it not being shown what was the communication between that person with the defendant: Held, that it was not sufficient. *Phillips v. Lescot*, 23 L. O. 94.

3. In an affidavit of service of a rule to compute, it was stated to have been effected on a hotel keeper, at whose house the defendant and his family were residing, and the Court held it sufficient. *Gosling v. Best*, 23 L. O. 127.

Trial.—Where in an action of detinue the value of the chattel is stated to be 20*l.*, the cause is triable before the sheriff under the writ of trial act.

Quære, whether the defendant can, by consent, before the sheriff, waive an objection, that the cause is not within the operation of that act.

Where an objection is intended to be raised, that a cause was not properly triable by the under-sheriff, the motion must be to set aside the writ of trial, and not for a new trial. On shewing cause against a rule nisi for a new trial in an action tried before the under-sheriff, the party shewing cause must be provided with an office copy, not only of the affidavits on which the rule has been obtained, but of the under-sheriff's notes also. *Walker v. Needham*, 23 L. O. 203.

Variance.—1. The plaintiff declared upon an instrument as a promissory note, which upon its production in evidence, appeared to be in the following form:—"six months after date, pay without acceptance on order of T. C. F., 100*l.*, value received." The instrument was issued by the branch bank of a joint-stock banking company, of which T. C. F. was managing director, and was signed by T. N., the manager, "for the directors." Held, that the instrument might be treated as a promissory note by the holder, and that there was no variance, therefore, between the proof and the declaration, within 3 & 4 W. 4, c. 42, s. 23. *Miller v. Thompson*, 23 L. O. 143.

2. The particulars of set-off to an action for goods sold were in the following terms: "August, 1840. Cash, being the amount of the plaintiff's dishonoured acceptance, and charges 21*l.* 6*s.*" At the trial, the plea of set-off was supported by the production of an unpaid bill of exchange for 19*l.*, coming due in the month of August, 1840, and indorsed by

the plaintiff; a verdict having been found for the defendant, held, that the variance was not such as that the plaintiff could have been misled, and that it afforded no ground for a motion for new trial. *Parsons v. Wilson*, 23 L. O. 174.

Warrant of Attorney.—Upon a motion for leave to enter up judgment upon an old warrant of attorney, the affidavit of the attesting witness was dispensed with, it being sworn that he had been unsuccessfully sought at the residence of which he was described in the attestation, and that the defendant had acknowledged his own liability, and also the hand-writing of the attestation. *Read v. Forde*, 23 L. O. 127.

2. Where an affidavit of the execution of a warrant of attorney has been filed pursuant to 3 Geo. 4, c. 39, ss. 1 & 2, in order to obtain judgment on it, it is sufficient to produce an office copy of the affidavit so filed. *Bland v. Wilson*, 23 L. O. 142.

Writ of Inquiry.—The court allowed a writ of inquiry after judgment by default in an action of debt on an administration bond, breaches being suggested pursuant to the 8 & 9 W. 3, c. 11, s. 8, to be executed before the chief justice instead of the sheriff, notwithstanding the 3 & 4 W. 4, c. 16, but granted only a rule nisi for that purpose in the first instance. *The Archbishop of Canterbury v. Burlington*, 23 L. O. 173.

PRACTICE (EQUITY.)

Administration of Assets.—In a suit instituted for the purpose of realising a sum of money charged by a testator upon his estate, the court will not, on hearing on further directions, order payment of the surplus of such estate to the parties beneficially interested, without the consent of all parties, the usual course being to order the amount to be paid into court, with liberty to the parties to apply. *Green v. Green*, 23 L. O. 195.

Attachment.—1. If it should be proved on a return of *non est inventus* to an attachment, that the sheriff has neglected his duty in not arresting a party whom he might have taken, the court will, notwithstanding, grant an order for a serjeant-at-arms. *Thomas v. Shirley*, 23 L. O. 196.

2. A prisoner in custody under an attachment for not answering, is not entitled to be discharged in consequence of his having been brought before the court after the return of the habeas issued, pursuant to the rule 5 of the 1 W. 4, c. 36, s. 15. *Colley v. Candin*, 23 L. O. 195.

Advancing cause.—The court will not advance a demurrer for the purpose of having it disposed of, with the view of allowing a motion on the part of a defendant that the bill may be revived within a given time, or be dismissed. *Strickland v. Strickland*, 23 L. O. 91.

Discovery.—Where official correspondence is required to be in the most unreserved nature, a third party is not entitled to the production of it on a bill of discovery. *Smith v. The East India Company*, 23 L. O. 194.

Distringas on Stock.—1. The object of the

distringas in the Court of Exchequer in Equity, was to restrain the transfer of stock until a bill could be filed for an injunction, and if the bill was not filed in due time, the bank would not regard a second distringas. So, under the act transferring the Exchequer jurisdiction to the Court of Chancery, a party is not to have a second restraining order, and to entitle him to apply for an order to restrain the transfer of stock under the 4th section of the act, he should have such a case to sustain that order as would entitle him to an injunction on a bill. *In re Amyot*, 23 L. O. 169.

2. Where an assignment had been made several years ago, of a share of certain funds in Court, and the assignees had neglected to obtain a stop order: Held, that a subsequent assignee of the same share, could not obtain such an order upon petition, without the appearance of the party to whom the share originally belonged. (*Master of the Rolls*). *Dudfield v. Davis*, 23 L. O. 43.

Parties out of Jurisdiction.—Where any of the parties to a suit, who are beneficially interested, are out of the jurisdiction, the Court cannot make a decree to bind their interests, although their absence may not prevent the hearing of the cause. Formerly the objection was taken as a preliminary objection, but now the usual course is to suggest it at the hearing. *Willets v. Busby*, 23 L. O. 139.

Want of Prosecution.—The pendency of an action at law, involving the same question as that for which a suit in this Court was instituted, will not prevent the Court from dismissing the bill for want of prosecution. *Major v. Boulde*, 23 L. O. 91.

PRINCIPAL AND AGENT.

If a party employ a man who is intoxicated, to do a particular work, he becomes responsible for the way in which that man performs the work. *Wanstall v. Pooley*, 23 L. O. 43.

See *Goodman v. Kennell*, 1 M. & P. 241.

RECEIVER.

Where no probate or letters of administration have been taken out, the Court will appoint a receiver *pendente lite* in the Ecclesiastical Court, as a matter of course, unless special circumstances are shewn. *Rendall v. Rendall*, 23 L. O. 172.

REFERENCE.

1. If an attesting witness is required to make an affidavit of the execution of an award, a tender should be made to him of the affidavit, and the necessary expences attending the making it. *Ex parte Pike*, 23 L. O. 173.

2. Where the order of reference, dated May, 1839, directed the arbitrator to enlarge the time to the 2d November, 1841, or to such other or ulterior day as he should ultimately appoint and signify in writing under his hand, to be indorsed on the order of reference, and the arbitrator made his award in October, 1841, having indorsed no enlargement of the time on the order of reference: it was held, that the award was good, and that

no indorsement of any enlargement of time up to 2d November, 1841, was necessary. *Davison v. Gauntlett and another*, 23 L. O. 141.

3. If a rule has been obtained, calling on a party to shew cause why he should not pay money in conformity with the directions of an award, he may, on shewing cause against that rule, make the same objections, which would be available on shewing cause against a rule for an attachment for non-payment of the money. *Kerr v. Geston*, 23 L. O. 200.

TRUSTEES.

1. Trustees under a settlement for the purpose of executing powers of appointment, but not having a power of sale vested in them, are not trustees within the meaning of Order 30 of 26th August, 1841. *Turner v. Hyde*, 23 L. O. 171.

2. Trustees are not entitled to retain an appointed portion of a trust fund, as a security for costs and expences, where the remainder is likely to prove an adequate indemnity. (*Master of the Rolls*). *Ex parte Simpson*, 23 L. O. 27.

3. The Court will not, on a summary application, appoint new trustees of a charity under the 1 W. 4, c. 21, but will refer it to the Master to approve of proper persons to be such trustees, and will act upon his report. (*Master of the Rolls*.) *In the matter of Whitney's Charity*, 23 L. O. 43.

4. After a reference to the Master, under the 1 W. 4, c. 60, to enquire whether it is proper that new trustees should be appointed in place of those out of the jurisdiction, the Court cannot make an order for the appointment of such new trustees, without being satisfied, either by the Master's report or in some other way, that the parties applying for the order are beneficially interested. *Re Peter Frazer Grant*, 23 L. O. 140.

WITNESS.

It seems that where a party has been convicted and sentenced, and has suffered the punishment on a charge of subornation of perjury, he cannot afterwards be allowed to make an affidavit on behalf of another person, and that if an affidavit made by him be put on the file of the Court, it will be ordered to be taken off. *In re James Allen*, 23 L. O. 218.

WILL.

Where a testator leaves property to children generally, without naming them, the Court will invariably refer it to the Master to ascertain whether all such children are before the Court; and *semble*, this is of course, even though the trustees express themselves satisfied. *Raikes v. Ward*, 23 L. O. 197.

2. A testator bequeathed all his property to his wife for life, remainder to children, to whom, as well as to the wife, he then gave several specific legacies, and, in conclusion, mentioned particularly parts of the property, and gave it all, with the residue, to his wife: Held, that the wife took a life interest only in

the property, and that it was not subject to be converted for the benefit of the legatees in remainder. *Vaughan v. Buck*, 23 L. O. 193.

See *Hove v. Earl Dartmouth*, 7 Ves. 137; *Mills v. Mills*, 7 Sim. 401; *Bethune v. Kennedy*, 1 Myl. & C. 114; *Alcock v. Sloper*, and *Collins v. Collins*, 2 Myl. & K. 699 & 703; *Pickering v. Pickering*, 2 Beav. 31.

3. The words "when or if" certain legatees shall attain twenty-one, is held to constitute a vested legacy, reference being had to the context of testator's will. *Lister v. Bradley*, 23 L. O. 125.

See *Knight v. Cameron*, 14 Ves. 391; *Hanson v. Graham*, 6 Ves. 239; *Branson v. Wilhamson*, 7 Ves. 421; *Vawdry v. Geddes*, 1 Russ. & M. 208.

LEGAL CHRONOLOGY OF 1841.

January.

13. A new rule was made by the Common Law Courts relating to ejectments. See 21 L. O. 208.

26. Parliament was opened by the Queen in person, and in the speech from the throne it was announced that measures would be submitted without delay, for the more speedy and effectual administration of justice.

27. At the Hilary Term examination, only 90 candidates attended, and of these 87 were passed. This appears to be the smallest number since the examination was instituted.

Lord Brougham re-introduced a bill for the enfranchisement of copyholds, and Lord Redesdale for the amendment of copyhold tenure.

During the term 50 gentlemen were called to the bar.

February.

The Attorney General introduced a bill for facilitating the administration of justice in Courts of Equity, (see report of the debate, 21 L. O. 327,) and Sir Edward Sugden brought in a bill to facilitate the administration of justice in the House of Lords and the Privy Council. See the debate, reported 21 L. O. p. 406. The following bills were also introduced:

To amend the law of Copyright, by Mr. Serjeant Talfourd.

To remove objections to the admission of evidence on the ground of interest, by Mr. C. Buller.

For the registration of parliamentary elections, by Lord John Russell.

To amend the law of costs, and allow writs of error in cases of mandamus; by Sir F. Pollock.

For improving county courts; by Mr. Fox Maule.

For rendering a release as effectual as a lease and release; by Mr. James Stewart.

To abolish the punishment of death in certain cases; by Mr. F. Kelly.

Mr. Serjt. Talfourd's copyright bill was negatived, there being 35 for, and 45 against it.

6. Mr. Justice Littledale retired from the Bench.

6. Mr. Wightman was appointed a Judge of the Court of Queen's Bench.

16. The Earl of Cardigan was tried for feloniously shooting (in a duel) at Captain Tuckett, and acquitted for want of evidence. See 21 L. O. 291.

Numerous bills were brought in during this month for establishing new courts of request.

Petitions were presented for the removal of the Courts from Westminster to the neighbourhood of the Inns of Court.

March.

The bills relating to the law brought in during this month were the following:—

For holding petty sessions and summary trials,—the Earl of Devon. See report of the debate, 21 L. O. 405.

To limit the criminal jurisdiction of the Quarter Sessions.

To amend the law of bankruptcy, insolvency, and lunacy; the Lord Chancellor.

For the better recovery of tithes; Captain Peckhall.

To appoint a public prosecutor; Mr. Ewart.

To facilitate the transfer of property held in trust for charitable purposes; Mr. James Stewart.

To improve the administration of justice in boroughs; the Attorney General.

To amend the law of sewers.

To amend the law relating to offences against the person; Lord J. Russell.

To amend the law relating to embezzlement; Lord J. Russell.

April.

3. A new order was made by the Court of Chancery regarding the transfer of stock, and costs. See 22 L. O. 103.

23. A debate took place on the new judges in equity bill. See 22 L. O. 1.

27. Sir Thomas Wilde, the Solicitor General, brought forward his motion relating to the removal of the Courts from Westminster, and a select committee was appointed to inquire into the subject. See the report of the debate, 22 L. O. 3.

New regulations were made by the divorce committee of the House of Commons. See 22 L. O. 40.

29. The candidates for admission as attorneys were examined, and 93 passed, and 5 deferred.

During the term, 36 gentlemen were called to the bar.

May.

2. A debate took place on the punishment of death bill, when the existing punishment was continued.

10. The annual indemnity act passed. See 22 L. O. 52.

11. On this and several subsequent days, the select committee on the proposed removal of the Courts from Westminster assembled and examined witnesses.

The bills introduced during this month were the following:—

To abolish stamps on affidavits.

To restrict the allowance of costs on frivolous suits.

18. The following acts were passed :
 Lease and release, see 22 L. O. 52.
 Banking co-partnership, 22 L. O. 68.
 Slave compensation, 22 L. O. 100.

June.

4. At the Examination for Trinity Term, 102 candidates were passed, and 6 deferred.

9. On a majority against the ministers, on the appointment of Judges in Equity, the bill was withdrawn.

The Barristers called in Trinity Term by the different Inns of Court, were 37.

Several meetings were held of the Select Committee on the Courts removal.

The following bills were postponed :

County Courts.

Bankruptcy, Insolvency and Lunacy.

Administration of Justice in Equity.

Appellate Jurisdiction.

A bill to amend the administration of justice in Chancery Act, was brought in. See 22 L. O. 152.

A bill to amend the law of principal and factor, was brought in.

The following bills were also postponed :

Charitable Trusts.

Principal and Factor.

Petty Sessions.

Costs.

Evidence.

Offences against the Person.

Mandamus.

Lord Whamcliffe brought in a bill to amend the Law of Marriage.

21. Sir John Campbell was created a peer of the Realm, by the title of Lord Campbell, and was appointed Lord Chancellor of Ireland, on the resignation of Lord Plunkett.

21. The following acts received the royal assent :

Law Stamps. See 22 L. O. 197.

Court of Chancery. *Ib.* 484.

Tithes Recovery. *Ib.* 227.

Copyhold and Customary Tenure. *Ib.* 129.

Punishment of Peers. *Ib.* 210.

Frivolous Suits Costs. *Ib.* 162.

Sewers. *Ib.* 245.

Highways.

22. Usury on Bills

Punishment of Death. 22 L. O. 391.

Bribery at Elections. *Ib.* 261.

Election Petitions Trial, *ante*.

The Parliament was prorogued.

23. The Parliament was dissolved.

August.

1. The provisions of the statute relating to searches for judgments, came into operation this day. See 22 L. O. 23.

16. The Judicial Committee decided in favour of the will and codicil of James Wood of Gloucester. See the report, 22 L. O. 23.

19. The New Parliament assembled.

25. Her Majesty's speech was read by the Lords Commissioners.

26. New Orders were issued by the Lord Chancellor and Master of the Rolls. See 22 L. O. 371.

September.

The following bills were brought into the House of Lords by the Lord Chancellor :

For facilitating the Administration of Justice, the main object of which was the appointment of two new Equity Judges, and the abolition of the Equity Exchequer.

For the amendment of the bankrupt laws, &c.

For improving and extending the jurisdiction of County Courts.

For transferring certain proceedings in Chancery, Bankruptcy, and Lunacy, to County Courts.

The Master of the Rolls introduced a bill for consolidating and amending the laws relating to attorneys and solicitors.

On the change of administration, Lord Cottingham resigned the Great Seal, and Sir Thomas Wilde, the office of Attorney General.

Lord Lyndhurst was appointed Chancellor; Sir F. Pollock, Attorney General; and Sir William Follett, Solicitor General.

Lord Campbell resigned his post of Chancellor of Ireland, and Sir Edward Sugden was appointed in his stead.

Bills were brought in by Sir R. Peel to continue such laws as will expire before the 1st January, until 31st July, 1842.

October.

5. The following acts received the royal assent :

Administration of Justice in Equity. See the act 22 L. O. 484.

Continuance of expiring laws.

7. Parliament was prorogued by the Lords Commissioners.

12. A new order was made on the abolition of the Exchequer. See 22 L. O. 490.

28. Mr. Knight Bruce, and Mr. Wigram, were appointed Vice Chancellors under the new act.

12. Alexander M'Leod was acquitted of the charge of murder, after twelve days' trial. See the report, *ante*, 65.

November.

Discovery of the exchequer bill fraud. See p. 17, *ante*.

11. New orders in Chancery were made for the distribution of the judicial business. See p. 24, *ante*.

17. New orders were made in the Court of Chancery, relating to the practice as to distringas on stock. See p. 35, *ante*.

19. The first five orders of the 26th August were suspended till the first day of Easter Term.

25. Sudden termination of Michaelmas Term early in the day, on account of the absence of counsel. See p. 88, *ante*.

At the examination of articulated clerks 113 were passed, and 5 postponed.

The calls to the bar during Michaelmas term were 47.

December.

10. A new order was made, amending the order of 17th November as to distringas on stock. See p. 115, *ante*.

The number of barristers called during the year was 170; and of attorneys examined, 395:

of the latter several were not admitted; the number therefore on the whole of the year is comparatively small. Last year 489 were passed. The barristers have increased in number: the previous year being 155.

The professional events of the year, it will be observed, have not been numerous. The more important are the creation of new Equity Judges, and alterations in Chancery practice; some retirements from the Common Law Bench; the change of the Lords Chancellor of England and Ireland, and the Attorney and Solicitor General; and the inquiry into the expediency of removing the Courts from Westminster.

LAW OF ATTORNEYS.

COSTS OF SOLICITOR AS TRUSTEE.

A SOLICITOR, who is a trustee of the separate property of a married woman, and acts as her attorney in several suits relating to the property, in one of which he was not a party, in such suit he will be entitled to his costs, as between solicitor and client; but in the others only to costs out of pocket.

A petition was presented to obtain payment of the professional charges of Alderman Harmer, as solicitor to a Mrs. Palmer, in two suits in Chancery, and an action which had been instituted in relation to Mrs. Palmer's separate annuity, of which Alderman Harmer was trustee. The charges had been disallowed by the Master, on the ground that Mr. Harmer, being both trustee and solicitor to Mrs. Palmer, was not entitled to any costs as against his *cestui que trust*, except costs out of pocket. It was stated that Mrs. Palmer had been informed as to the rule of law on the subject, and had expressly agreed, though verbally only, that Mr. Harmer should be allowed out of her separate estate all his charges and expenses, both as a solicitor and otherwise, incurred in the execution of the trust; except that he was not to charge anything for receiving the annuity. The first suit was brought by — Frazer, as a creditor of Mrs. Palmer, against Mr. and Mrs. Palmer, to enforce payment of his debt out of her separate estate. To that bill Mr. Harmer was not a party. In the second suit, a bill of interpleader was filed by Palmer against Mr. Harmer and Mrs. Palmer, praying for the directions of the Court concerning the annuity. To this bill Mr. Harmer and Mrs. Palmer severally demurred, and their demurrers were allowed. Then an action was brought by Mr. Harmer as trustee, to recover the annuity, and this action was successful.

Mr. G. L. Russell, for the petitioner, contended that the decision in *New v. Jones*, Jarm. Conv. Vol. 9, p. 338, and *Moore v. Frowd*, 3 Myl. & C. 45, did not apply—at all events not to the first cause, in which Mr. Harmer was not a party, and which was not in execution of the trust, but adverse to it;

and since the decision in *Murray v. Barlow*, 4 Sim. 82; 3 Myl. & K. 209, it was impossible to say that she may not make a bargain for herself in relation to her separate estate. *Smith v. Langford*, 2 Beav. 362.

Mr. *Simpkinson*, *contra*.—If Mrs. Palmer is bound by the agreement in the manner represented, the order for taxation is wrong.—[*Alderson*, B.—If there is any exception to the rule as to costs between *cestui que trusts* and trustees, it ought to appear clearly and distinctly; more particularly where the parties are attorney and client.]—It was the duty of this party to protect the trust property. There could be no personal decree against her in respect of that property; *Francis v. Wissell*, 1 Madd. 258.

Alderson, B.—I think the Master was wrong as to the first suit, and right as to the others. In the first suit, Harmer was not acting in the character of trustee, though he was Mrs. Palmer's solicitor. As to the other matters, he is clearly not to be allowed more than his costs out of pocket. The principle is, that the estate is to be protected by the unbiassed judgment of the trustee. Can a solicitor, who is a trustee, be allowed to make a profit of the contest in which the estate is involved? If so, he would have two interests in opposition to each other. A trustee in such a situation, has a duty to perform and a private interest. In some cases, if the costs now asked for were put into the scale, private interest would kick the beam. It has been said, that the attorney in this case is respectable; it may be so, but it is in order that attorneys may be respectable that they sustain the loss. I think, therefore, that, in the first suit he ought to be allowed his costs, as between attorney and client, and that in the two other suits he ought to be neither a sufferer nor a gainer. The case must proceed on the principle laid down by the Lord Chancellor in 3 Mylne and Craig, 45.—*Fraser v. Palmer*, 4 You. & C. 515.

JOINDER OF SOLICITOR WITH CLIENT IN A SUIT.

It has been decided lately, that a solicitor who has joined with his client in practising a fraud, may be made a co-defendant to a suit to set aside the transaction.

The cases cited in argument were, *Bennet v. Wade*, 2 Atk. 324; *Fenton v. Hughes*, 7 Ves. 287; *Hilliard v. Cox*, 1 Lord Raym. 562; and 2 Salk. 746; *Young v. Elworthy*, 1 Myl. & Keen, 215; *Newman v. Hodgson*, 7 Ves. 409; *Thomas v. Davies*, 12 Ves. 417; *Challner v. Murhall*, 6 Ves. 118; *Scarth v. The Bishop of London*, 1 Haggard's Eccles. Rep. 625.

The *Vice Chancellor*.—In this case I have read through the whole of the bill, and am of opinion that it states such a case as requires an answer. It was said, that it was improper to file the bill against Messrs. James and Sons; but there can be no doubt of the propriety of filing such a bill, if what is stated by Lord *Redesdale*, in the second edition of his work on Pleading, and repeated, word for word, in

the fourth edition, is correct. There his lordship states in the most explicit language, that "where bills have been filed to impeach deeds on the ground of fraud, attorneys who have prepared the deeds, and other persons concerned in obtaining them, have been frequently made defendants, as parties to the fraud complained of, for the purpose of obtaining a full discovery; and no case appears in the books of a demurrer by such a party, because he had no claim of interest in the matter in question by the bill." This is stated by Lord *Redesdale* without any authority. Then he goes on in the next sentence: "Indeed an attorney under such circumstances, being brought as a party to the suit to a hearing, has been ordered to pay costs, apparently on the same ground as costs were awarded against arbitrators in the cases of their misconduct." For this his lordship does give an authority, but with a wrong reference.^a In the fourth edition, published by Mr. Jeremy, the sentence is preserved as it stood in the second edition. I cannot suppose that a person of his lordship's experience, would have stated in his book that attorneys had been made parties to such bills, if there could be any doubt that such had been the case. In the case of *Le Texier v. The Murgraves of Anspach*, 15 Ves. 169, the opinion of Lord *Eldon* is thus expressed: "Where an attorney or other agent is so involved in the fraud charged by the bill, that though a conveyance or other relief cannot be prayed against him, a Court of Equity will, rather than that the plaintiff shall not have his costs, order that agent to pay them; if he is made a party, the plaintiff must pray that he pay the costs; otherwise a demurrer will lie." From this passage in Lord *Eldon's* judgment it is clear that his lordship took it for granted that the practice was as Lord *Redesdale* had laid it down. In *Bowles v. Stewart*, Lord *Redesdale* himself acted on what he had stated in the second edition of his work; for he says: "as to Mr. Bowles's solicitor, he was acting for his client; but his duty as a solicitor did not bind him to assist his client in an act of injustice. I am sorry a man who has had so ample a testimonial to his character, should have been led into such a mistake; but his zeal for his client has led him too far; he has properly been made a party. He was an acting party in the transaction, and properly brought to a hearing, and ought to be chargeable with the costs, so far as they relate to the release, in case they cannot be recovered from Richard Bowles." So that here is a judicial recognition of the doctrine stated by Lord *Redesdale* in his *Treatise on Pleading*.

I wish it to be understood, that I am now merely proceeding upon the footing of the statements contained in the bill, and desire that Messrs. James and Sons will not suppose that I have the least suspicion of the purity of their intentions in acting as they have done. I have known them too long to suppose that they would be guilty of any impropriety of conduct. But, from what is stated

in the bill, I think that they have been properly made parties, and that what is prayed against them is properly prayed. *Beudes v. Burch*, 10 Sim. 322.

SUGGESTED IMPROVEMENTS IN PRACTICE.

To the Editor of the Legal Observer.

HEARING SUMMONSES AT THE JUDGES' CHAMBERS.

Sir,—As your Journal is looked upon as the organ of the profession, I beg to ask a small space for some observations upon the constitution of the Judges' chambers. I will, with your permission, observe upon the following facts—that the chambers are *private* Courts for *public* business;—that the fees for attendance are *insignificant* for *important* business; and that the present practice occasions great *delay* in matters requiring *dispatch*.

With respect to the first fact: The evils resulting from private tribunals are almost too obvious to require pointing out. I will only refer to two. A private Court superinduces *carelessness*, both on the part of the Judge and the practitioner—the former, too frequently deciding without hearing, and the latter bowing assent, without advocating the client's cause. I will not enlarge upon this point, but will only observe that many curious scenes which have taken place at chambers would never have occurred in a public Court. Again, private Courts superinduce *disorderly* discussion. The practice of the public Courts, which require that the applicant should state his case and his opponent answer it—the former, reply, and the judge decide—is founded in wisdom. At chambers, either party commences—the one may interrupt the other—parties and judge may talk at the same time, and he who can speak loudest, longest, and evinces the greatest tact at interruption, generally succeeds.

As to the second fact:—In causes where the sum sought to be recovered is under 20*l.*, the fee for attendance is 3*s.* 4*d.*; and in agency causes, the town agent receives 1*s.* 8*d.* Thus, not unfrequently, for attending a summons requiring great consideration, waiting three or four hours for a hearing, and arguing it before a learned judge, the fee for so doing is either 3*s.* 4*d.* or 1*s.* 8*d.* An inn-porter would disdain the mere sacrifice of time for such a fee.

Now as to the last fact.—Since the abolition of arrest, all applications to hold to bail must be made at chambers. Besides, all the other applications made here require dispatch; but before the simplest or the most important point can be decided, there must be several hours' delay; sometimes occasioned by the judges' attendance in Court; and at others, by the pressure of business at chambers.

I not only complain, but have a *remedy*. Substitute for the present tribunals, two public Courts, appurtenant to each Superior Court, for this particular business, each to be presided over by a puisne judge, and give the practitioner a respectable fee.

J. C.

^a See 2 Atk. 234, instead of 324.

MASTERS IN CHANCERY FROM 1726.

In the Monthly Record for March 1831, we gave a List of the Masters of the Rolls and the Masters in Chancery from 1660, with the Accountant Generals since the act 12 Geo. 1, c. 32, relating to the Funds in the Court of Chancery. It will be convenient to repeat part of the former List and to complete the List of Masters down to the present time, in order that solicitors may be enabled to trace the papers from one office to another.

1726 .. Feb. 17 ..	I.	Samuel Burroughs
1761 .. Nov. 7 ..		William Graves
1801 .. June 2 ..		John Campbell
1820 .. Feb. 8 ..		John Edmund Dowdeswell

1726 .. Feb. 17 ..	II.	Robert Yard
1728 .. May 29 ..		Nath. Allen
1754 .. April 24 ..		Thomas Harris
1778 .. March 6 ..		John Ord
1809 .. Nov. 9 ..		William Alexander
1824 .. Jan. ..		William Wingfield

1738 .. May 12 ..	III.	Edmund Sawyer
1759 .. Oct. 27 ..		Samuel Bowner
1765 .. June 24 ..		Edward Montague
1795 .. Nov. 20 ..		John Simeon
1824 .. March 9 ..		James William Farrer

1760 .. March 8 ..	IV.	John Browning
1780 .. April 11 ..		Robert Bicknell
1781 .. Aug. 6 ..		John Wilmot
1804 .. Jan. 13 ..		John Springett Harvey
1826 .. Mar. 23 ..		Sir Griffin Wilson, Knt.

1738 .. Feb. 10 ..	V.	Henry Montague
1765 .. Dec. 3 ..		Thomas Cuddon
1775 .. Dec. 19 ..		John Hett
1790 .. Nov. 11 ..		John Spranger
1794 .. July 23 ..		James Stanley
1811 .. Feb. 20 ..		James Stephen
1831 .. March ..		William Brougham

1728 .. May 29 ..	VI.	John Tothill
1732 .. Mar. 31 ..		Richard Edwards
1767 .. Aug. 6 ..		Robert Pratt
1775 .. July 26 ..		William Weller Pepys
1807 .. April 1 ..		Edward Morris
1815 .. June 22 ..		Joseph Jekyll
1823 .. March 3 ..		James Trower
1836 .. June		Nassau William Senior

1750 .. Aug. 14 ..	VII.	Peter Holford
1804 .. July 18 ..		Samuel Compton Cox
1831 .. March ..		George Boone Roupell
1838 .. Feb.		Andrew Henry Lynch

1726 .. Dec. 13 ..	VIII.	Francis Cudworth Masham
1731 .. June 2 ..		William Spicer
1761 .. Sept. 21 ..		Thomas Anguish
1763 .. Jan. 15 ..		Samuel Pechell
1782 .. May 11 ..		Alexander Thomson
1786 .. April 1 ..		Alexander Popham
1809 .. Feb. 10 ..		Charles Thomson
1821 .. July 12 ..		Francis Cross
1839 .. March ..		Samuel Duckworth

1748 .. March 2 ..	IX.	Thomas Lane
1773 .. Jan. 21 ..		Edward Leeds
1803 .. Mar. 28 ..		Francis Paul Stratford
1831 .. March ..		Henry Martin
1839 .. July		Sir William Horne, Knt.

1764 .. June 20 ..	X.	John Eames
1795 .. May 17 ..		Nicholas Smith
1802 .. Feb. 1 ..		Nicholas Ridley
1806 .. Jan. 16 ..		Robert Steele
1817 .. July 30 ..		William Courtenay
1826 .. Mar. 23 ..		Robert Lord Henley
1840 .. Nov. ..		Sir George Rose, Knt.

On the abolition of the Court of Equity
Exchequer.

1841 .. Oct.	XI.	Richard Richards.
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We have placed each office according to the
seniority of the present Masters.

ATTORNEYS TO BE ADMITTED.

Easter Term, 1842.

QUEEN'S BENCH.

Clerk's Name and Residence.

Jagger, Charles Henry, Handsworth.
Jackson, William Simes, Shrewsbury; and 7,
Sidmouth Street.
Jenkyn, James, 277, Strand; and Tonbridge.
Jackson, William Windale, Hampstead; Park
Street, Camden Town.
Leighton, Charles, 46, Drummond Street;
and Cheltenham.
Lee, Matthew Cressey, Kingston-upon-Hull;
and 34, Charles Street.

To whom articulated, assigned, &c.

George Unett, Birmingham.
Jonathan Scarth, Shrewsbury.
John Carnell, Tonbridge.
William Newton, 14, South Square, Gray's
Inn.
William Henry Gwinnett, Cheltenham.
John Cressey Richardson, Kingston-upon-
Hull.

To whom articulated, assigned, &c.

Meredith, Samuel, Buxton.
 Morgan, William, Shrewsbury.
 Mosley, Oswald, Stockport.
 Mantell, Alexander Houstoun, 59, Burton Crescent.
 Norman, John, 35, Bedford Street; and Tamworth.
 Norris, Frederic Wm. Nory, 27, Liverpool St. and Leeds.
 Norton, Thomas, Shrewsbury; and 4, Arthur Street.
 Pagden, William, 76, Mark Lane.
 Parke, William, the younger, 11, Caroline Street; and 22, Upper Montagu Street.
 Palmer, Thomas, 5, Bedford Street; and Fakenham.
 Parrott, William, Macclesfield.

Powell, Thomas Wilde, 20, John Street, Leeds; and 7, Tredegar Place.
 Pears, Alfred Augustus, 6, Diddington Place, Pentonville; and Wokingham.
 Poole, Thomas Lewis, Newent.

Phelps, Robert Valentine, 13, Cecil Street; and Tewkesbury.
 Pooley, Robert Bickerton, 26, Devonshire Street; and Guildford.
 Prance, William Henry, 4, New Millman Street; and Plymouth.
 Rasch, Oswald Lee, Blackheath.
 Ridgway, Henry Edward, Manchester.
 Ryley, Edward Charles, Machynlleth; and 4, Hare Court, Inner Temple.
 Syngé, Francis Hutchinson, 1, Chapel Street.

Sisamey, Thomas, 12, Guildford Street.

Smith, George, the younger, Altrincham.
 Shield, Robert, 14, East St.; and Leicester.
 Smith, Thomas, the younger, Sheffield.

Skyenner, Henry, 46, Great Portland Street,
 Slatter, Thomas, 5, Felix Terrace, Islington; and Warwick.

Stenning, Charles, 277, Strand; and 18, Trinity Terrace.

Smith, Thomas, the younger, 5, New Ormond Street; Gloucester; and 21, John Street.
 Sidney, Philip Joseph Marlow, Stockton.
 Smith, Jeremiah, Rugeley.

Tourney, Stewart, 10, Ashley Terrace; Hythe, Kent; 2, Penton Place, Pentonville.

Tempest, Charles, Holbeck.

Thelwall, Bevis Heywood, Oswestry; and 7, Sidmouth Street.

Taylor, John Rowland, Bristol.

Trenchard, Frederic Alfred, 5, Gray's Inn Square; and Exmouth.

Vivian, James William, 56, Guildford Street.

Upton, John Everard, 2, Henrietta Street; and Leeds.

Woodhouse, James George, 5, Harpur Street; and 7, Ampton Street.

Clerks' Name and Residence.

John Coles Symes, 31, Fenchurch Street.
 Richard Emery, Shrewsbury.
 Christopher Moorhouse, Congleton.
 John William Wall, Devizes.

Felix John Hamel, Tamworth.

James Edward Norris, Halifax.

William Wybergh How, Shrewsbury; assigned to Frederic Ouvry, Tokenhouse Yard.

John Clabon, Mark Lane.

James Parke, 63, Lincoln's Inn Fields.

Edmund Kent, Fakenham.

Samuel Higginbottom, Macclesfield; assigned to Thomas Parrott, Macclesfield; to Edward Procter, Macclesfield.
 Thomas Townsend Dibb, Leeds.

John Tanner, Speenhamland; assigned to Wm. W. Wheeler, Wokingham.

Richard Hodges Carter, Gloucester; assigned to Thomas Cadle, Newent.

Robert Phelps, Bathbury; assigned to F. L. Bodenham, Hereford.

Joseph Hockley, the elder, Guildford; assigned to Joseph Hockle, Guildford.

Edward Jago, Plymouth; assigned to Henry Woolcombe, Plymouth.

Isaac Sewell, 35, Throgmorton Street.

John Withenshaw Ridgway, Manchester.

Henry Manisty, 3, King's Road; assigned to Richard Matthews Machynlleth.

John Edward Mosley, Burton-upon-Trent; assigned to William Charles King, 11, Serjeant's Inn.

Philip Wilson, and Frederic Lane, King's Lynn.

George Smith, Manchester.

Messrs. Thomas and Wm. Freer, Leicester.

George Wells, Sheffield; assigned to Thomas J. Parker, Sheffield.

John Shaw, Berner's Street.

Daniel Winter Burbury, Warwick; assigned to John Lampray, Warwick.

Frederick Smith, King's Arms Yard, Coleman Street.

Thomas Smith, the elder, Westbury; to William Henry Trinder, 1, John Street.

Thomas Henry Faber, Stockton.

Frederic Crabb, Rugeley; assigned to Richard Robinson, Rugeley; assigned to William Henry Smith, Chancery Lane.

Edward Sedgwick, Hythe, Kent; assigned to Clement Tudway, 1, John Street.

William Ward, Leeds.

Thomas Longueville Longueville, Oswestry.

Simon George Little, Bristol.

John Trenchard, Exmouth.

Charles Clarke, 20, Lincoln's Inn Fields.

Thomas Everard, Upton, Leeds; assigned to John Upton, Leeds.

James Thomas Woodhouse, Leominster.

Clerk's Name and Residence.

Weightman, James Milward, Sunbury; and Oddie's Row.

Waller, William Henry, 30, Queen's Row, Pimlico; and Burford.

Wright, Edwin, Birmingham.

Welsb, James William, Westborn Green.

Wilkinson, Leonard, the younger, 12, Wakefield Street.

Watson, Charles Whitehall Davies, Stourport. Wickham, James, 2, Norfolk Street; and 16, Honiton Street.

Weddell, William, 10, Great Ormond Street; and Gosport.

Wilson, William Mundy, 14, Store Street, Bedford Square; and Manchester.

Whitehouse, Thomas, Ladbroke Terrace, Notting Hill.

Young, William, 3, Arunder Terrace, Barnsbury Road.

To whom articulated, assigned, &c.

Alexander William Grant, 13, King's Road, Gray's Inn; assigned to Arthur Walker, 18, King's Road.

James Scarlett Price, Burford.

Edward Wright, Birmingham.

Benjamin Goode, 44, Howland Street.

Leonard Wilkinson, Blackburn.

Charles Winwood Winnall, Stourport.

Robert Fuller Graham, Newbury.

David William Weddell, Gosport.

Ellis Cunliffe, Manchester.

Richard Whitehouse, 8, Chancery Lane.

William Ford, 4, South Square.

Added to the List pursuant to Judges' orders.

Brown, William Joseph, Gateshead; and Upper Mary-le-bone Street.

Cooper, Montague Ormsby, 26, Upper Berkeley Street, Connaught Square.

Cooke, John Mynde, 22, Woburn Place; and New Ormond Street.

Gardiner, Charles, Highgate.

Holloway, John Hendy, 6, Bartholomew Close; Assembly Row; and Lincoln's Inn Fields.

Lee, Edward Stephen, 58, Sloane Street, Chelsea.

Williams, Henry, the younger, 17, Lincoln's Inn Fields.

John H. Preston, Newcastle-upon-Tyne.

William John Whyte, 1, Vernon Place, Bloomsbury Square.

Richard Underwood, Ross; assigned to Charles Gwillim Jones, Gray's Inn Square.

John Charles Hall, Lincoln's Inn Fields.

John Butter, Havant.

William Lee, Lincoln's Inn Fields.

Henry Williams, senior, Lincoln's Inn Fields.

LIST OF NEW PUBLICATIONS.

Williams's Executors and Administrators. 3d edit., 2 vols. Price 3*l.* 3*s.* boards.

Bissett on Estates for Life. Price 14*s.* bds.

Pocock on Insurance Societies. Price 7*s.*

Story (Mr. Justice) on Partnership. Price 1*l.* 5*s.* boards.

Goldsmith on Equity. 2d edit. Price 8*s.*

Wharton's Police Law. Price 3*s.* 6*d.* bound.

Penruddock's Criminal Law. 2d edit. Price 7*s.* 6*d.*

Jarman's Bythewood. Vol. 3. Price 1*l.* 5*s.*

Starkie's Treatise on Evidence. 3 vols. Price 4*l.* 14*s.* 6*d.*

MASTERS EXTRAORDINARY IN CHANCERY.

From 22d December, 1841, to 21st January, 1842, both inclusive, with dates when gasetted.

Auckland, John Tattersall, Lewes, Sussex. Dec. 31.

Craig, Samuel, Shrewsbury. Dec. 24.

Dalby, Thomas Burgh, Ashby-de-la-Zouch, Leicestershire. Jan. 11.

Day, Alfred, Norwich. Dec. 21.

Geldard, Christopher John, Settle, York. Jan. 14.

Hall, Richard Hudson, Birmingham. Jan. 21.

Hanbury, Oliver Lunn, Ashby-de-la-Zouch. Dec. 24.

Mertens, Herman Dirs, Margate, Kent. Jan. 7.

Sedgley, Charles, Manchester. Dec. 24.

Sollory, James, Nottingham. Jan. 11.

Thompson, Luke, York. Dec. 24.

Ward, Thomas, Oxford. Dec. 21.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 22d December, 1841, to 21st January, 1842, both inclusive, with dates when gasetted.

Clarke, Robert, and Edward King, Bath, Attorneys and Solicitors. Jan. 4.

Morris, Thomas, and Thomas Geddes, Wigan, Lancaster, Solicitors. Jan. 21.

Sherard, Robert Castel, and Charles Thomas Wilson, Oundle, Northampton, Attorneys and Solicitors. Jan. 7.

Vizard, Charles, John Vizard, and William Cox Buchanan, Dursley, Attorneys, Solicitors, and Money Scriveners. Dec. 31.

Walton, William, and Richard Coles, Basinghall Street, Attorneys and Solicitors. Jan. 11.

Williams, Cyril, and Thomas Ellis, Pwllheli, Carnarvon, Attorneys, Solicitors, and Conveyancers. Jan. 14.

Wood, Thomas, and Robert Ellis, Corbet Court, Gracechurch Street, Attorneys and Solicitors. Jan. 4.

BANKRUPTCIES SUPERSEDED.

From 22d December, 1841, to 21st January, 1842,
both inclusive, with dates when gazetted.

- Carttar, Charles Joseph, Greenwich, Kent, Banker. Dec. 28.
Ewbank, Cooper, Liverpool, Merchant. Jan. 7.
Gratton, Joseph, Newbold, Chesterfield, Derby, Brick Maker. Dec. 21.
Hey, Joseph, jun., New Pellon, Ovenden, Halifax, York, Carpenter and Joiner. Jan. 7.
Holyland, Thomas, Manchester, Manufacturer of Woollen and Cotton Cloths, Waistcoatings, Fancy Trowser Cloths, Stuffs and Merinos, also a Manchester and Yorkshire Warehouseman. Dec. 21.
Kipping, Henry, Maidstone, Kent, Broker. Dec. 21.

BANKRUPTS.

From 22d December, 1841, to 21st January, 1842,
both inclusive, with dates when gazetted.

- Apsey, William Henry, Rotherhithe, Surrey, Ship Breaker. *Algera*, Off. Ass.; *Cattlin*, Ely Place, Holborn. Jan. 14.
Balls, Thomas Fitt, Vassall Road, Brixton, and of Vauxhall Road, Lambeth, Surrey, Coach and Omnibus Proprietor, and Corn Dealer. *Pennell*, Off. Ass.; *Gannet*, Newgate Street. Dec. 28.
Barnfield, William, jun., Mark Lane, London, Wine and Spirit Merchant. *Pennell*, Off. Ass.; *Watson*, Austin Friars. Jan. 7.
Barnsley, Thomas, Tipton, Stafford, Engine Maker. *Miller & Co.*, Piccadilly; *Hill*, Birmingham. Dec. 24.
Bartram, Thomas, Seven Oaks, Kent, Linen Draper. *Turquand*, Off. Ass.; *Sole & Co.*, Aldermanbury. Jan. 11.
Bedford, James, Hunslet Moorside, Leeds, York, Cudbear Manufacturer, and Manufacturing Chemist. *Robinson & Co.*, Essex Street, Strand; *Ward & Co.*, Leeds. Dec. 28.
Benrose, Thomas, Spalding, Lincoln, Grocer. *Edwards*, Spalding; *Tooke & Son*, Bedford Row. Dec. 24.
Berriman, Thomas, Peckham Grove, and also of Montague Cottage, Camberwell, Surrey, Builder. *Johnson*, Off. Ass.; *Tilford & Co.*, Old Jewry. Dec. 24.
Biddle, William, Holborn Hill, Fishmonger. *Belcher*, Off. Ass.; *Lewis*, Raymond Buildings. Dec. 31.
Biggs, Henry Roster, Brewer Street, Golden Square, Carpenter and Builder. *Belcher*, Off. Ass.; *Rogers*, Manchester Buildings, Westminster. Dec. 21.
Buisson, John Francis, Brabant Court, Philpot Lane, London, Merchant. *Groom*, Off. Ass.; *Hine & Co.*, Charterhouse Square. Jan. 11.
Bishop, George, St. Mary Axe, London, Merchant and Ship and Insurance Broker. *Turquand*, Off. Ass.; *Swain & Co.*, Old Jewry. Jan. 18.
Bisshopp, James, Westburton, Bury, Sussex, Market Gardener. *Blackburn & Co.*, New Inn; *Ellis & Co.*, Petworth. Jan. 4.
Bradshaw, Benjamin, and George Richardson, Wortley Lane, near Leeds, York, Canvass Manufacturers and Merchants. *Knapper & Co.*, Liverpool; *Payne & Co.*, Leeds; *Armstrong*, Staple Inn. Jan. 18.
Brown, James, Newcastle-upon Tyne, Cooper. *Baltge & Co.*, Chancery Lane; Messrs. *Foster*, Newcastle-upon-Tyne. Dec. 21.

- Brown, George Ogden, Sheffield, York, Timber Merchant. *Atkinson & Co.*, Church Court, Lothbury; *Smith & Co.*, Sheffield. Jan. 21.
Buckle, Thomas, Barnard Castle, Durham, Draper and Mercer. *Jackson & Co.*, Kirby Stephen; *Barnes*, Barnard Castle. Jan. 18.
Burnie, John, Tokenhouse Yard, London, Merchant. *Edwards*, Off. Ass.; *Watson & Co.*, Tokenhouse Yard. Jan. 18.
Busk, Robert Parish, Hunslet, Leeds, York, Machine Maker. *Walker*, Furnival's Inn; *Blackburn*, Leeds. Jan. 18.
Carpenter, William, Chippenham, Wilts, Inn-keeper. *Pinniger*, Chippenham; *Pinniger & Co.*, Gray's Inn Square. Jan. 14.
Carpenter, George, Chelmsford, Essex, Chemist and Druggist. *Graham*, Off. Ass.; *Pain & Co.*, Great Marlborough Street. Dec. 31.
Chadwick, George Heywood, Lancaster, Publican. *Hill & Co.*, Bury Court, Saint Mary Axe; *Upton*, Manchester. Jan. 18.
Clark, George Delianson, of the Strand, and Fieldgate Street, Whitechapel, Newspaper Vendor, Bookseller, and Manufacturer of Animal Charcoal. *Johnson*, Off. Ass.; *Waught*, Great James Street, Bedford Row. Jan. 4.
Clark, Henry, Fleet Street, London, Brush Manufacturer. *Edwards*, Off. Ass.; *Weston*, St. James's Place, Pall Mall. Dec. 24.
Clough, Samuel, and William Thompson Clough, Ecclestone, Lancaster, Alkali Manufacturers. *Addington & Co.*, Bedford Row; *Johnson*, St. Helen's. Jan. 14.
Clough, Robert, and Bartholomew Maxiere Galan, Poulton-cum-Seacombe, Chester, Alkali Manufacturers. *Chester & Co.*, Staple Inn; *Davenport & Co.*, Liverpool. Jan. 18.
Close, Josiah, Worcester, Glove Manufacturer. *Bedford*, Gray's Inn Square; *Bedford & Co.*, Worcester. Dec. 28.
Collinson, Henry, and William Brown, Oxford Street, Upholsterers. *Whitmore*, Off. Ass.; *Allen & Co.*, Carlisle Street, Soho. Jan. 4.
Davies, David, jun., Glanchywedog, Llanidloes, Montgomery, Flannel Manufacturer. *Bigg*, Southampton Buildings; *Hayward*, Llanidloes. Jan. 11.
Denniss, John, sen., and John Denniss, jun., Tooley Street, Surrey, Linen Drapers. *Lackington*, Off. Ass.; Messrs. *Sole*, Lothbury. Jan. 14.
Denyer, John, High Street, Southwark, Tailor and Draper. *Pennell*, Off. Ass.; *Cattlin*, Ely Place. Dec. 21.
Dod, Charles, and Henry Bent, Riches Court, Lime Street, London, Ship Brokers. *Johnson*, Off. Ass.; *Toune*, William Street, Belgrave Square. Jan. 21.
Durrant, William, Southwick and Brighton, Sussex, Wharfinger and Coal Merchant. *Bennett*, Brighton; *Richards & Co.*, Lincoln's Inn Fields. Jan. 7.
Edgell, Richard, Long Ashton, Somerset, Inn-keeper and Victualler. *Short*, Bristol; *Hall*, Bristol; *Clarke & Co.*, Lincoln's Inn Fields. Dec. 21.
Ellison, John, Leeds, York, Nail Manufacturer. Messrs. *Rushworth*, Staple Inn; *Battle*, Selby. Jan. 14.
English, Charles Garrard, formerly of the Royal Hotel, St. James's Street, Pall Mall, Hotel Keeper, and late of York Place, Vauxhall Bridge Road, Pimlico. *Graham*, Off. Ass.; *Watkins*, Bedford Square. Jan. 18.
Evans, Edward, and Andrew Evans, Birmingham,

Warwick, Painters and Glasiers. *Parker & Co.*, New Boswell Court; *Harrison*, Birmingham. Jan. 14.

Evans, Charles Samuel, Cornhill, London, and of Westcroft Place, Hammersmith, Middlesex, Master Mariner and Merchant. *Pennell*, Off. Ass.; *Lawrence & Co.*, Bucklersbury. Jan. 21.

Fisher, John, and Elizabeth Fisher, formerly of Wigan, but now of Meghill, Lancaster, Wine and Spirit Merchants. *Carter*, Liverpool; *Sharpe & Co.*, Bedford Row. Dec. 31.

Ford, Thomas Henry, Rochford, Essex, Victualler. *Wood & Co.*, Corbet Court, Gracechurch Street; *Wood*, Rochford. Jan. 4.

Ford, James, Bristol, Cooper and Warehouseman. *White & Co.*, Bedford Row; Messrs. *Bevan*, Bristol. Dec. 24.

Fothergill, Mark, and Michael Fothergill, Upper Thames Street, London, Drysalter. *Edwards*, Off. Ass.; *Cattlin*, Ely Place. Jan. 21.

Fowkes, John, Beeston, Nottingham, Grocer and Draper. *Jones & Co.*, John Street, Bedford Row; *Brown*, Nottingham. Dec. 24.

Gardiner, Joel, Bristol, Brewer. *Gingell*, Heabury; *Meredith & Co.*, Lincoln's Inn. Dec. 28.

Gibb, William, Alnwick, Northumberland, Currier. *Spows & Co.*, Alnwick; *Dunn & Co.*, Raymond Buildings. Jan. 4.

Gidden, Thomas, Farringdon, Berks, Victualler. *Bramcomb*, Wine Office Court, Fleet Street. Jan. 18.

Gillard, George, Plymouth, Devon, Tea Dealer and Grocer. *Patten*, Hatton Garden. Jan. 4.

Goodwin, William, Dronfield, Derby, Maltster and Beerhouse Keeper. *Bicknell & Co.*, Lincoln's Inn Fields; *Drabble*, Chesterfield. Dec. 31.

Goodwin, James, Bishop's Stortford, Hertford, Innkeeper. *Alager*, Off. Ass.; *Fry & Co.*, Cheapside. Jan. 11.

Green, George, Manchester, Engineer. *Todd*, Manchester; *Vincent & Co.*, Temple. Dec. 21.

Greenlees, James, Friday Street, Cheapside, Shawl Warehouseman. *Green*, Off. Ass.; *Borredale*, King's Arms Yard, Coleman Street. Dec. 21.

Hall, John Edmund, and Henry Toone, Nottingham, Lace Manufacturers. *Yellap*, Farnival's Inn; Messrs. *Parsons*, Nottingham. Jan. 18.

Harrison, Stephen Winn, Bristol, Builder and Mason. *Weymouth & Co.*, Cateaton Street, London; *Haberfield*, Bristol. Dec. 21.

Hartley, Francis William, Halifax, York, Chemist and Druggist. *Hitchin & Co.*, Halifax; *Jaques & Co.*, Ely Place. Jan. 18.

Hilton, Charles, Manchester, Cotton and Fustian Manufacturer. *Abbott*, Off. Ass.; Messrs. *Bennett*, Manchester. Dec. 31.

Horsnail, William, Dover, Kent, Carpenter and Joiner. *Kennell*, Dover; *Hawkins & Co.*, New Boswell Court. Dec. 24.

Howarth, George, late of Halifax, York, now of Todmorden, Lancaster, Corn Dealer. *Hall*, Moorgate Street, London; *Leadbeatter*, Miffield, near Dewsbury. Jan. 11.

Humfrey, Thomas, jun., Great Stanmore, Middlesex, Bricklayer and Builder. *Green*, Off. Ass.; *Williams*, Alfred Place, Bedford Square. Dec. 31.

Kitchener, Thomas, Arundel Street, Coventry Street, Engraver and Jeweller. *Belcher*, Off. Ass.; *Pike*, Old Burlington Street. Jan. 11.

Lane, Joseph, sen., Stockport, Chester, Cotton Manufacturer. *Coppock & Co.*, Stockport; *Coppock*, Cleveland Row, St. James's. Jan. 14.

Lee, Tottenham, Wakefield, York, Worsted Yarn

Manufacturer. *Rawley & Co.*, Manchester; *Sharp*, Staple Inn. Dec. 21.

Leicester, Peter, Longsight, near Manchester, Slate Merchant. *Cotterill*, Throgmorton Street; *Fletcher & Co.*, Liverpool. Jan. 21.

Lines, Augustus, Irongate Wharf, Paddington, Middlesex, Hay Salesman. *Gibson*, Off. Ass.; *Grasham*, Castle Street, Holborn. Dec. 21.

Lock, James, Northampton, Tea Dealer and Draper. *Cattlin*, Ely Place. Dec. 31.

Luscombe, John, Plymouth, and of Stonehouse, Devon, Maltster. *Bartram & Co.*, Bishopsgate Street Within; *Wers*, Plymouth. Jan. 4.

Maidlow, John, Fetter Lane, London, Builder. *Whitmore*, Off. Ass.; *Rhodes & Co.*, Chancery Lane. Jan. 21.

Marshall, Michael, Chew Magna, Somerset, Money Scrivener. Messrs. *Barfoot*, Temple; *Davies & Co.*, Wells. Dec. 28.

Moore, Samuel, King William Street, London Bridge, London, Draper. *Green*, Off. Ass.; *Billing*, King Street, Cheapside. Jan. 11.

Needham, Joseph Smith, formerly of Hincley, Leicester, now of Ullesthorpe, Leicester, Banker, Brewer, Coal and Timber Merchant. *Graham*, Off. Ass.; *Kam-Jerret*, Hincley. Jan. 21.

Newstead, John, and Joseph Hextall, Regent Street, Lacemen. *Pennell*, Off. Ass.; *Reed & Co.*, Friday Street, Cheapside. Dec. 31.

Nicholls, William, Adams Mews, Edgware Road, Livery Stable Keeper. *Grasham*, Off. Ass.; *Gaddan & Co.*, Farnival's Inn. Jan. 11.

Nicholson, William, Leeds, York, Banker. *Emmett & Co.*, Bloomsbury Square; *Creswell*, Manchester. Dec. 21.

Noora, George, Red Lion Square, Importer of Foreign Goods. *Green*, Off. Ass.; *Spyer*, Broad Street Buildings. Jan. 14.

Nursey, Richard, Whitehall Place, Kentish Town, Tallow Chandler. *Groom*, Off. Ass.; *Starling*, Leicester Square. Jan. 21.

Partes, Mary, Golden Square, Printseller and Publisher. *Groom*, Off. Ass.; *Parter*, St. Paul's Churchyard. Jan. 7.

Phillips, Ann, and James Phillips, Whitechapel Road, Window Glass Cutters and Sellers, and Lead Merchants. *Green*, Off. Ass.; *Henderson*, Mansell Street, Goodman's Fields. Dec. 24.

Posten, William Elton, Ludgate Hill, London, Chemist and Druggist. *Edwards*, Off. Ass.; *Parsons*, Temple Chambers, Fleet Street. Dec. 31.

Povey, William, Ashton-under-Lyne, Lancaster, Grocer and Tea Dealer, Whitensmith and Gas Fitter. *Clarke & Co.*, Lincoln's Inn Fields; *Higginbottom*, Ashton-under-Lyne. Jan. 14.

Procter, Amos, and Robert Procter, Kingston-upon-Hull, Coach Proprietors. *Bell & Co.*, Bow Church Yard; *Tenney & Co.*, Hull. Dec. 28.

Richards, Robert, James Briant, and James Coker, Shadwell, Middlesex, Rope Makers. *Gibson*, Off. Ass.; *Pike*, Old Burlington Street. Dec. 24.

Robberds, Jonas Henry, Norwich, and Starling Day, of Southtown, otherwise Little Yarmouth, Suffolk, and both of them of Taverham, Norfolk, Paper Makers. *Poster & Co.*, Norwich; *Sharpe & Co.*, Bedford Row. Jan. 18.

Roberts, William, Rawmarsh, York, Grocer *Wiglenorth & Co.*, Gray's Inn; *Nicholson*, Wath, near Rotherham. Jan. 11.

- Robottom, Charles, Holborn Hill, Tavern Keeper. *Edwards*, Off. Ass.; *Warklers*, Castle Street, Holborn. Dec. 24.
- Sanderson, Charles, Sheffield, York, File and Fork Manufacturer. *Rodgers*, King Street, Cheapside; *Fickers & Co.*, Sheffield. Jan. 21.
- Schenck, Johann Jacob, Addle Street, London, Merchant. *Gibson*, Off. Ass.; *Austen & Co.*, Raymond Buildings, Gray's Inn; *Percy & Co.*, Nottingham. Jan. 4.
- Scott, Joseph, and Henry Coker, Wood Street, Cheapside, London, Woollen Warehousemen. *Whitmore*, Off. Ass.; *Turner & Co.*, Basing Lane. Jan. 21.
- Shand, John, Liverpool, Victualler. *Norris & Co.*, Bartlett's Buildings; *Toulmin*, Liverpool. Jan. 7.
- Shingler, Samuel, and Sylvanus Thomas James, Liverpool, Linen Drapers and Silk Mercers. *Booker*, Liverpool; *Holme & Co.*, New Inn. Dec. 31.
- Shingler, Samuel, Liverpool, Linen Draper. *Salé*, & Co., Manchester; *Messrs. Baster*, Lincoln's Inn Fields. Dec. 28.
- Smith, Thomas, Fore Street, Cripplegate, Wine Merchant. *Lackington*, Off. Ass.; *Bartlett*, Bank Street, Regent Street. Dec. 21.
- Smith, Dyer Berry, and Joseph Wheeler Smith, Alton, Stafford, Paper Manufacturers. *Chaplin*, Gray's Inn Square; *Harrison*, Birmingham. Jan. 11.
- Spoor, Amor, sen., and Amor Spoor, jun., Newcastle-upon-Tyne, Builders, Joiners, and Cabinet Makers. *Hoyle*, Newcastle-upon-Tyne; *Shield & Co.*, Queen Street, Cheapside. Jan. 14.
- Stephens, John, Menheniot, Cornwall, Ironfounder. *Surr*, Lombard Street; *Lockyer & Co.*, Plymouth. Jan. 11.
- Stevens, John, James Street, Limehouse, Middlesex, Brick Maker. *Groom*, Off. Ass.; *Tucker*, Bank Chambers, Lothbury. Dec. 28.
- Stevens, John, and Robert Horatio William Drummond, Rhodewell Wharf, Mile End, Middlesex, Road Contractors and Carmen. *Groom*, Off. Ass.; *M'Leod & Co.*, Billiter Street. Dec. 31.
- Stevenson, David, sen., Compton Street, Brunswick Square, Middlesex, Patent Safety Paper Maker, and Wholesale Stationer. *Gibson*, Off. Ass.; *Burrell & Co.*, White Hart Court, Lombard Street. Jan. 11.
- Strachan, Arthur, Friday Street, London, Warehouseman. *Johnson*, Off. Ass.; *Messrs. Gole*, Lime Street. Jan. 11.
- Swift, William, Manchester, Mercer and Draper. *Messrs. Baster*, Lincoln's Inn Fields; *Salé & Co.*, Manchester. Jan. 4.
- Swift, George, Manchester, Tailor and Draper. *Vincent & Co.*, Temple; *Simpson*, Manchester. Jan. 7.
- Sunderland, Henry, and George Wrigge, Huddersfield, York, and Stainland, Halifax, York, Dealers in Cotton Warps. *Lever*, King's Road, Bedford Row; *Barker & Co.*, Huddersfield. Jan. 18.
- Swift, William, Manchester, Draper, and Robert Crampton, of the same place, Draper, (late in partnership with the said William Swift). *Willis & Co.*, Tokenhouse Yard; *Barrett & Co.*, Manchester. Dec. 31.
- Sutcliffe, John, Halifax, York, Grocer. *Craven & Co.*, Halifax; *Wiglesworth & Co.*, Gray's Inn. Jan. 14.
- Tarbottom, Samuel, late of Leeds, York, Chemist and Druggist, and now of Liverpool, Factor and Merchant. *Fidley*, Temple; *Barr & Co.*, Leeds. Jan. 7.
- Thompson, John, Blackburn, Lancaster, Power Loom Cloth Manufacturer. *Fidley*, Temple; *Ellingthorpe*, Blackburn. Dec. 31.
- Tugwell, Humphrey, Fawley, Southampton, Farmer and Cattle Dealer. *Walker*, Southampton Street, Bloomsbury; *Deacon & Co.*, Southampton. Jan. 14.
- Turner, Richard, Northampton, Shoe Manufacturer. *Hensman*, Northampton; *Turner & Co.*, Basing Lane, London. Jan. 11.
- Ward, Benjamin, late of Newcastle-upon-Tyne, Northumberland, now of Charlotte Terrace, New Cut, Lambeth, Surrey, Boot and Shoe Manufacturer. *Alagar*, Off. Ass.; *M'Duff*, Castle Street, Holborn. Jan. 14.
- Weigall, Charles Harvey, Conduit Street, Regent Street, Tailor. *Twyman*, Off. Ass.; *Pike*, Old Burlington Street. Dec. 31.
- West, Frederick Thomas, Commercial Road, Lambeth, Surrey, Coal Merchant. *Lackington*, Off. Ass.; *Stevens & Co.*, Queen Street, Cheapside. Dec. 24.
- Whitney, Elliott, Liverpool, Soap Boiler. *Booker*, Liverpool; *Holme & Co.*, New Inn. Dec. 28.
- Wilcock, Robert, Lower Allethwaite, Cartmel, Lancaster, Banker. *Johnson & Co.*, Temple; *Hitchcock*, Manchester. Jan. 14.
- Williams, William, Cowarne Court, Cowarne, Hereford, Corn Dealer and Cattle Dealer. *Clarke & Co.*, Lincoln's Inn Fields; *Reece*, Ledbury. Jan. 4.
- Williams, William, Bristol, Builder and Mason. *Clarke & Co.*, Lincoln's Inn Fields; *Smith*, Bristol. Jan. 7.
- Wood, Thomas, jun., Saddleworth, York, Merchant. *Fidley*, Temple; *Barr & Co.*, Leeds. Jan. 7.
- Yewens, William, late of Pinner's Hall, Old Broad Street, London, now of Goulton Terrace, Barnsbury Road, Middlesex, Scrivener, Bill Broker and Wine Merchant. Dec. 21.
- Young, William, Milford Nursery, near Godalming, Surrey, Nurseryman and Seedsman. *Lackington*, Off. Ass.; *Bolton & Co.*, Austin Friars.

PRICES OF STOCKS.

Monday 24th January, 1842.

3 per Cent. Reduced	- - - - -	89½ a ½
3 per Cent. Consols Annuities	- - - - -	89½ a ½ a ½
3½ per Cent. Reduced Annuities	- - - - -	99½ a ½ a ½
New 3½ per Cent. Annuities	- - - - -	98½ a ½ a ½
Long Annuities, expire 5th Jan. 1860	- - - - -	12½ a ½
Annuities for 30 yrs, exp. 5th Jan. 1860	- - - - -	12½ a ½
India Bonds 3½ per Cent.	- - - - -	13s. pm.
Bank Stock for Account 24th Feb.	- - - - -	168½
3 per C. Cons. for Account 24th Feb.	- - - - -	89½
Exchequer Bills 1000l. a 2½d. 19s. a 17s. a 19s. a 17s.		
Ditto 500l. do.	19s. a 17s. a 19s. a 17s.	
Ditto Small do.	19s. a 17s. a 19s.	

The Legal Observer.

SATURDAY, FEBRUARY 5, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

REFORM IN CHANCERY.

No. I.

WE have commenced from time to time various series of articles on the subject of Chancery Reform. We lay claim to the merit of constantly keeping public and professional attention alive to the subject, and we have all along insisted that a large measure of reform was necessary. We now resume the subject, with the intention of reviewing its prominent points and present position, with feelings of the highest satisfaction. A great deal that we have contended for has already been accomplished: the power to accomplish a great deal more has been given; and the will to accomplish it, we verily believe, exists. We have now no up-hill fight to make: we have only to shew that a reform is really called for, and it will be made. To those who remember the old times, this is indeed encouraging. Principles now fully admitted, were then regarded with horror: to attempt to shew that the Court of Chancery was defective was held to be an attack on the constitution; to say that there was great delay in the hearing of causes was considered a kind of constructive treason; to hint that the Master's Office was imperfect, was considered an attack on the privileges of the Crown; and to say that *all* the Six Clerks were not absolutely essential, was to throw discredit on one of the most venerable institutions of the country. (Our younger readers may hardly credit this, but it was so). But all this is now, we are thankful to say, entirely changed. It is admitted on all hands, that the Court of Chancery is very defective indeed, and that scarcely any part of its procedure is sound. So far from denying that there is great delay in the hearing of causes, two new Judges have been appointed to

dispose of the enormous arrear and to keep it down for the future; and the principle has been admitted that more shall be appointed if necessary. Nobody now ventures to assert, not even the Masters themselves, that their office has any perfection in it; and the Six Clerks have been reduced to five, and the Sixty Clerks have hauled down their colours, and *struck*. So far, then, from there being any longer anything sacred in the character of the Court of Chancery, it is now admitted that this Court is, as now administered, an engine of great injustice; that equitable principles are sound, but that the mode in which they are worked out for the suitor is fraught with unnecessary delay and expense. Neither is it disputed by the Heads of the Court, post penultimate, penultimate, present, and we will venture to say, future; that what has already been done is only a small part, in comparison with what remains to do. We propose, therefore, in this series of articles to consider what must, in our opinion, still be done, to render the Court adapted to serve the ends designed by its establishment as the great Court of Equity of this country.

We have always divided this subject into four great heads. 1. The proceedings in a cause preparatory to the hearing of causes. 2. The hearing. 3. The proceedings in a cause subsequent to hearing, and 4. The appellate jurisdiction.

The grievances attending the hearing of causes, the *second* head, we are happy to say, are now fast disappearing. The accession of judicial strength and labour, also let us say the ability, of the new judges, will soon leave the suitor little to complain as to this stage of a cause. We have no doubt that causes will be duly heard when set down for hearing, and heard also in a manner

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satisfactory to the suitor. But all the other heads remain at the present moment in an unsettled state. The proceedings preparatory to the hearing, and the proceedings subsequent to the hearing, the practice, the pleadings, the mode of taking evidence, and more especially the masters' office,—all these require great alterations; but we are happy to say, there is great hope that a real reform will reach even these. The enquiry that is now going on, at the request of the Lord Chancellor, embraces all these points, and until we are in possession of the result, it would be premature to go farther into this part of the subject. We would only say that in our opinion the reforms already recommended in this work,* more especially in the masters' office, should at any rate receive a trial.

But there is one head of this subject, the *fourth*, the appellate jurisdiction of the Court of Chancery, which, so far as we know, is as yet untouched even by enquiry; and it is to this part of the subject, therefore, to which we wish to call attention; as it particularly concerns the Court of Chancery.

The necessary reforms we can, in the present article, only glance at. We think that there should be but one great court of appeal in the country, which should be the House of Lords; that this court should sit, not only in the parliamentary session, but during the whole legal year; that to it should be referred all the judicial business of the Privy Council, now heard by the Judicial Committee; that the Lord Chancellor should preside in the Court, assisted by the other peers who have held judicial situations; that to enable the Lord Chancellor to discharge the increased duties thus imposed on him, he should be withdrawn wholly from the Court of Chancery; and that his place there should be supplied by a permanent judge, who should not be dependent on the change of ministers; that to render this great appellate court more easy of access, the fees and expences attending an appeal to the House of Lords should be reduced; and that such other alterations should be made in the practice of the House of Lords as to facilitate the hearing and dispatch of business.

All these changes have been repeatedly urged in these pages; but we have thought this a fitting occasion for re-opening the subject; we shall proceed to state the reasons for them as opportunity offers.

* See a series of letters to the Editor, in vol. 21.

NOTES ON RECENT STATUTES.

9 GEO. 4, c. 14.

By stat. 9 Geo. 4, c. 14, s. 1, it is enacted that no acknowledgment or promise by words only shall take a case out of the Statute of Limitations, unless the acknowledgment or promise shall be in writing, and "signed" by the party chargeable. A verbal acknowledgment of part of a debt is insufficient. *Willis v. Newham*, 3 Yo. & Jer. 519; recognized in *Waters v. Tompkins*, 2 C. M. & R. 723. When written words are required by the statute, it would seem that they must also be signed words. *Per Patteson, J.*, 4 Per. & D. 206. And it has recently been held, on the authority of *Willis v. Newham*, that an acknowledgment of part payment by a defendant, to take a case out of the Statute of Limitations, under 9 Geo. 4, c. 14, s. 1, must not only be in writing, but be signed by him. "I confess," said Lord Denman, C. J., "that if I had to construe the statute without reference to cases already decided, I should have thought payment and acknowledgment was to be treated as two things entirely different, and that payment might be proved by any evidence that would have been sufficient before the statute; consequently, that if proved by acknowledgment, the acknowledgment need not be in writing, or if in writing, signed. But the cases in the Exchequer put a different construction upon the act. This case must be governed by them, and I yield to them without reluctance; for no doubt if the point had occurred to the framers of the act, they would have provided for it in conformity with those authorities, which clearly advance the policy of the act." *Bagley v. Ashton*, 4 Per. & Dav. 204.

2 & 3 VICT. c. 29.

We have in recent numbers collected the several cases which have been decided on the construction of stat. 2 & 3 Vict. c. 29. (See *ante*, pp. 225, 260, and 340.) These cases have chiefly turned on the point whether the statute was or was not retrospective, and we now add the following case as to the same point. We have already cited the cases of *Luckin v. Simpson* and *Moore v. Phillips*, at some length. We now add what was said by Mr. Justice Cross as to this point:—"The point reserved as to the lien has been decided by the Court of Exchequer in the case of *Moore v. Phillips* (9 Dowl. 294), of which I have a note, and the circumstances of which resemble those of *Luckin v. Simpson*. On this account, the Judges who decided the latter case were consulted before judgment in *Moore v. Phillips* was given, and the Lord Chief Baron then expressed himself in the following terms: 'In this case we retain the opinion that we formerly expressed, namely, that this act has not a retrospective operation where the title of the assignees has vested before the act passed. *Luckin v. Simpson* certainly appears to have been a case in which the assignees were ap-

pointed before the passing of the act; but the Judges of the Court of Common Pleas say that if their attention had been particularly called to that fact, they should have considered that the vested rights of the assignees ought not to be injured by the act of parliament.' This decision is binding on the Court, and therefore the petition must be dismissed.' *Ex parte Varnish*, 1 Mont. D. & De G. 514. The opinions of all the Courts on this point, although recently somewhat conflicting, seem to be agreed.

Where an execution by *feri facias* on a judgment on a warrant of attorney (not given by way of fraudulent preference) was executed by seizure, after a secret act of bankruptcy, but not completed by sale of the goods seized before the issuing of the fiat, which was subsequent to the passing of the 2 & 3 Vict. c. 29, and it was held that the execution creditor was not entitled to the benefit of it as against the assignees of the bankrupt; the statute of 2 & 3 Vict. c. 29, not having had the effect of rendering valid such executions, so as to entitle the execution plaintiff to the benefit of them as against the assignees; nor repealed the 108th section of 6 Geo. 4, c. 16. *Whitmore v. Robertson*, 8 M. & W. 463; S. C. 23 L. O. 95.

NOTICES OF NEW BOOKS.

The English Constitution; a popular Commentary on the Constitutional Law of England. By George Bowyer, M.A., Barrister at Law. London: James Burns, 17, Portman Street. 1841.

HAVING repeatedly stated our opinion of the several methods of editing the Commentaries of Sir William Blackstone, we deem it unnecessary again to enter on the subject. We are bound, however, in fairness to allow any new candidate for professional fame, the opportunity of stating his views. We, therefore, lay before our readers such extracts from the preface of Mr. Bowyer, as will enable them to judge of his claims to their attention. His object has been to effect an improvement in editing such parts of the Commentaries as bear upon the *Constitutional Law of England*. He says,

"The great changes which have taken place since Blackstone wrote, render it necessary that the works of that illustrious commentator should be read with the notes and additions of later editors. That necessity is sufficiently shewn by the favourable manner in which the recent editions of the commentaries have been received. But Blackstone does not, in any form, altogether answer the purpose for which his commentary is intended. The principal object of that writer was to give students a knowledge of the entire civil and criminal jurisprudence of the country; the constitutional law, forms a secondary or introductory part of his work. Thus the portion of his book ex-

clusively devoted to constitutional law is necessarily incomplete in itself, because many things are either entirely omitted, or scattered over other parts of the commentaries, according to the nature of his plan. For instance, the practical results of the responsibility of ministers to parliament are imperfectly sketched out; and the law respecting the courts of justice, though an important part of our constitution, is necessarily reserved for the third and fourth books. For these reasons, Blackstone's Commentaries are but ill-adapted to the purpose of those who have not leisure or inclination to study the whole system of our public and private law, yet wish to acquire, within a comparatively small compass of time, a knowledge of the fundamental principles and more important details of the English constitution. That class of readers is very important, especially at the present time; since a more urgent necessity never existed for placing within the reach of all persons of education that knowledge of constitutional principles without which no honest man can exercise political functions and franchises with a safe conscience.

"Such is the object I have principally had in view.

"I have therefore brought together, within a single volume the whole substance of the chapters of Blackstone's first book relating to constitutional law, and also those parts of his writings bearing directly on the same subject, which lie interspersed in his third and fourth books. I have added all the new law under each head, and many things which Blackstone has either only hinted at or omitted altogether. The reader will also find in their proper places, the more valuable theories of De Lolme, and a good deal of important matter from various other sources."

Mr. Bowyer has treated fully of the clergy and ecclesiastical matters, and in explanation of this part of his labours, he remarks,

"In some places I may be accused of dealing with matters appertaining rather to divinity than to law; but it will perhaps appear, on reflection, that this was necessary, in those particular instances, to convey a correct notion of the church and its constitution. For how can we form an accurate idea of the connection between Church and State without knowing something of the intrinsic nature of the polity of the church? If the Church were formed and erected by the State, it would be otherwise; but the Church is something pre-existing, and must therefore be considered in itself, as well as in alliance with the State.

"And, on careful consideration, these higher principles will be found far more compatible with toleration and true civil and religious liberty, than the merely political and worldly theory of Church and State, which makes the Church rely upon penal statutes and political disabilities, instead of asserting her own independence and authority, and claiming the duty and affection of her children as her inheritance by divine right

"It must be admitted, that a legal book

written on ecclesiastical principles is somewhat new, and may perhaps meet with serious objections on the part of those who are averse from any thing out of the four corners of a record, or the literal construction of an act of parliament. How far this experiment may prove successful, time only can shew."

As a further example of the style of our author, superadded to the preceding extracts, we may take the following :—

"There are few subjects of investigation bearing on the temporal welfare of man more practically important than those laws whereby the benefits of a social state, and the security of persons and their rights, are established and maintained.

"That species of knowledge would be valuable even under a despotism. We should be desirous of knowing the principles upon which we are governed, even if we lived under the uncontrollable power of a despotic sovereign ; as we are impelled by a laudable ambition to inquire into the laws by which nature is regulated, though we feel our inability to influence their action even in the slightest degree.

"But, under the form of government established in this country, there are further reasons which render it highly blameable in any Englishman to neglect obtaining a knowledge of the constitution of his country. We all enjoy or, at least, we all either actually hold, or are qualified by the law to obtain, certain privileges and franchises, which, in fact, invest the possessor with a portion of the power whereby the British empire may be ruled either for the advantage or to the detriment of that great body politic. The moral and religious responsibility of the man who votes on the hustings, or even asks his neighbour to vote, or exercises the smallest public function, is, indeed, no less real and stringent than that of the highest ministers of the crown. The welfare of every free state depends, in a very great measure, upon the honest and prudent exercise of the franchises entrusted by the law to the mass of private citizens. It must frequently happen that the greatest questions, involving most of important interests, and even the welfare of the whole empire, are practically decided by votes given at elections. On those votes always depends the questions, by what men the empire shall be governed. How, indeed, can honest men be placed in the high offices of the state, unless the mass of the community possessing political power exercise it in favour of principles on which such men can consistently govern ? How can those who govern do so in a manner consistent with the honour and safety of the kingdom, if they have not the support of the mass of her majesty's subjects, who are entrusted with the parliamentary and municipal franchise and other public privileges ? How can the wisest of men govern wisely, if the great body of the community, or any large portion of it, choose, through ignorance, perverseness, or factiousness, to interfere with the deliberations of those in whom the constitution has vested the power to decide on matters of state,

—thus confounding the right of petitioning with that of legislating ; or to urge the adoption of extreme or dangerous measures, placing men deficient in prudence or information in the House of Commons, and in offices of municipal trust and influence.

"These very slight and superficial considerations are sufficient to convince any man of good sense, that it is necessary for the welfare of the commonwealth, that all classes of the community should act with the utmost caution in the discharge of their public duties as subjects of the British crown.

"How important is it, then, that we should all know something concerning the principles of that constitution in the administration of which we are all so much concerned ! How necessary is it for every man, who wishes to exercise his privileges as a British subject with a safe conscience, to be acquainted with the constitution, for the welfare and good administration of which he, to the extent of his power and influence, is responsible."

Mr. Bowyer writes with clearness and force, and his work manifests great learning and research. After reading the latest edition of Blackstone, the student will do well to consult this volume, and notice the important additions which have been made by Mr. Bowyer, from the various other sources, of which he has availed himself with remarkable care and diligence.

THE LATE CHIEF JUSTICE BUSHE.

It is no part of our duty, and as little is it our wish, to enter into the hot and exciting contentions of party politics ; — but without detracting from the neutral and professional complexion (so to speak) of this journal, we think it will be admitted by all, that the indiscriminate multiplication of peerages on unworthy objects is not only unconstitutional, but a positive injustice to those whose honors have been dearly won and nobly earned. The sins of commission, in this regard, by all past ministers, have, however, been infinitely more numerous than the sins of omission ; and we are bound to admit that our own profession has been more plentifully "pitchforked," (to use the quaint phrase of Sir Charles Wetherell,) than was consistent, either with a due regard to the merits of the individuals, or the exigencies of the public service.

There are, however, certain judicial employments or offices to which the peerage seems in practice to be incident — appendent, so to speak, as a matter of right. These are the offices of Lord High Chancellor in England and Ireland, and of Lord Chief Justice of the Court of Queen's Bench in

both countries. We have, however, seen it lately recorded in an Irish Law Journal, that Charles Kendall Bushe, after a service of sixteen years as Solicitor General, and in round numbers of twenty years as Chief Justice, has retired into the vale of private life, without any especial mark of his sovereign's approval. Surely there must be a mistake here. For the last century, or perhaps even antecedently, no man had filled the high office, so lately and so worthily occupied by Mr. Bushe, who had not, on his retirement, been raised to the peerage. The names of Carleton, Clonmel, Kilwarden, and Downes, at once occur to us, and without any disparagement to these extinct reputations, we may at once say, that whether in reference to the extent, or the value of their public services, not one can be weighed in the balance against the late Irish Chief Justice. The whole career of the man has been but a gradation of excellence, "where each second stood heir to the first." Of him, as of Sheridan, it may be well said—

"The Orator, Statesman, Minstrel, who ran
"Thro' each mode of the lyre, and was perfect
in all."

As a student, what can be more playful, and at the same time, more profound, than his address at the close of the Historical Society in 1794?—As a *Nisi Prius* advocate, what more pointed, racy, and brilliant, than his address to the jury in the case of *Mansergh v. Hackett*? As a law officer of the Crown, what more dignified, conciliatory, yet withal commanding, than his language and tone in the "State Prosecutions" commenced during the Secretaryship of Lord Maryborough in 1812;^a or what more incorruptible, than his resisting, on the part of the executive, the right of the Irish Chief Baron, since made a peer by the title of Baron Guillamore, to the appointment of clerk of the pleas in his own court? As a senator, we will not follow Mr. Bushe into the Irish Commons, but we may, in passing, remark, that there are few passages in any modern parliamentary orator, at all comparable to that wherein he speaks of the natural tendency of a revolutionary society to disorder, or in which he asserts the claims of his country to the confidence of England.

To the vulgar and technical practitioner, whose genius never soared beyond the

narrow rules his youth had conned," Bushe will, for these accomplishments, stand under the suspicion of shallowness; but let such captious critics but open the reports of Fox and Smith, of Smith and Batty, and of Alcock and Napier, and then, perhaps, they may slowly admit that this is a man "*omni loude cumulatus*." The judgments of the Irish Court of Q. B., in *Black v. Holmes*, 1 F. & S. 28; and *Harvey v. Rider*, 2 F. & S. 178, as delivered by Bushe, C. J., are worthy of the best periods of judicial oratory and exposition, and we can only regret that one so "dear in his high office,"—so accomplished out of it,—so eloquent, mild, gracious, simple, unassuming and learned, has not, *as yet*, taken his place in the House of Lords. We say *as yet*, for where merit and precedent run in a man's favour, the present premier is not a likely person to interpose any obstacle to deserved preferment.

[We insert the preceding remarks from a correspondent, whose opinion we believe is entitled to respect. Ed.]

DIVISION OF THE NORTHERN CIRCUIT.

It has been long manifest, that the enormous amount of business on the Northern Circuit must lead to a division of labour. The cases arising at Liverpool and Manchester are alone sufficient for a separate assize. It was scarcely possible for the Judges to go through the labour, even in a hurried manner, and return to London in time for Easter Term. The danger too, was, that the ablest Judges would avoid encountering a degree of fatigue, which few have strength to endure. The nature of the causes arising in a large part of the Northern Circuit, require eminent pleaders and commercial lawyers to preside on the Bench; and we trust this will be borne in mind.

The following, we understand, are the arrangements, so far as they are at present known.

Durham	Monday, 21st February
Newcastle	Friday, 25th "
Carlisle	Friday, 4th March
Appleby	Wednesday, 9th "
Lancaster	Saturday, 12th "
York	Wednesday, 2nd "
Liverpool	Thursday, 24th "

Mr. Baron Rolfe and Mr. Justice Wightman will go to Durham and Newcastle; Mr.

^a See Phillips's Specimens of Irish Eloquence, 349.

^b See State Trials.

Justice *Wightman* alone to Carlisle, Appleby, and Lancaster; Mr. Baron *Rolfe* will return to York on the 2nd March, where he will meet Mr. Baron *Purke*, and these learned Judges will hold the Assizes at York and Liverpool.

LAW OF ATTORNEYS.

LIEN ON FUND IN COURT.

IN a recent case it was decided that a solicitor who uses the names of parties as plaintiffs in a cause, without their consent, has no lien on the fund in Court for his *general* bill of costs. He is, however, entitled to be paid out of the fund their share of the costs of the suit properly incurred.

Mr. Baron *Alderson*, in giving judgment, said,—“As far as Captain and Mrs. Landers are concerned, the question is, what is the fund in Court? It is the balance after payment of the reasonable expense of the cause. I should say the lien on that fund does not depend on the question whether they retained Mr. Poole or not. All the divisible fund, is the fund, deducting the costs. It seems to me that Mr. Poole has no lien on the divisible fund, that is to say, the surplus of the fund, after payment of the costs of the suit. On the facts, the proper conclusion to be drawn is, that the petitioner is to be allowed the costs properly incurred by him as solicitor in each of the three equity suits, to be taken in each case out of the sum in Court, and that the parties are then in each case to be entitled to their distributive share of the residue. It appears to me that Mr. Poole was not the attorney of Captain and Mrs. Landers, or of Mr. Lomas, or of their trustees; that the utmost that can be said is, that they did not interfere after they knew their names were used by him as plaintiffs, to prevent that being done. But this, though it will give the defendants a claim against them, will give no claim to Mr. Poole on them. He can only establish a claim under a contract with them, and there is no evidence of that. But still he, as attorney for the Woolley's (using their names), recovered the fund, and the parties come in now to have the benefit of it, they can only have their share of the divisible fund recovered, which is the amount recovered deducting the reasonable expenses of recovering it. It seems also to be proved that the parties did retain Mr. Poole in the actions of ejectment, therefore he will have a lien on the shares of all the parties as to those costs. As to the shares of the two Woolleys, he will have a lien for his general bill. I think the share of Captain and Mrs. Landers and Mr. Lomas, incurred by the petition and examination before the Master, must fall on the petitioners. *Hall v. Laver*, 4 You. & Col. 216.

See *Ex parte Sterling*, 16 Ves. 258; *Worrall v. Johnson*, 2 J. & W. 214; *Lord v. Kellett*, 2 Myl. & K. 1; *Lowe v. Church*, 4 Madd. 391; *Davies v. Bush*, 1 Younge, 358.

MOOT POINTS.

MORTGAGE.—LEASE FOR A YEAR.

A. mortgages by lease and release, certain property to *B.* in the usual way, for ever, subject to redemption by *A.* *B.* afterwards buys *A.*'s equity of redemption in the premises. Is it necessary, since the passing of the act for rendering a lease for a year unnecessary, (4 Vict. c. 21,) to mention in the conveyance from *A.* to *B.*, that it is made in pursuance of that act?

LECTOR.

BANKER'S CHEQUE.

A. gives to *B.* his cheque for 50*l.*, dated to day, payable at his bankers, to *B.* or bearer, there being a private agreement between *B.* and *A.*, that *B.* shall give his acceptance at two months for the amount. *B.* gives his acceptance, but *A.* does not furnish the funds to take up the acceptance, and *B.* is sued upon it. Can *B.* sue *A.* upon his cheque, and must he present it before he does so? *B.* has no evidence of the transaction, and has given no other value for the cheque to *A.* than his acceptance, on which he is sued, but not paid. P. B.

MARRIAGE IN WRONG NAME.

A. and *B.* are married by banns, and in the course of time, three children are born; soon after the birth of the last child, *A.* discovers that *B.* has married him in her wrong name. Does the fact of *B.*'s marrying *A.* in her wrong name, but without his knowledge or consent, render the children illegitimate, and the marriage void? This case was lately made known to me, and *A.* wished to have a second marriage; but I thought the first would stand good, as though false names are given, if it can be shewn that it was not with the consent of both, the marriage will yet stand good.

CARRIER.

A carrier has been in the habit of carrying goods from a public wharf, and delivering them to *B.* Goods having been landed at this wharf, to be delivered to *B.*, were lost or stolen. Who is liable for the value of the goods?

LEASE.—AFFORTIONMENT OF RENT.—CROPS.

By indenture, dated in July, 1821, between *A. B.*, and *C. D.*, the lessor demised certain pieces of arable and pasture land, with the appurtenants; to hold to the lessee and his assigns from the 2d of February, then last past, for the term of the natural life of the lessee, yielding and paying yearly unto the lessor the rent or sum of *£*., by two equal half-yearly payments, on the 12th day of July, and 12th

day of January in every year, the first payment to be made on the 12th day of July next.

The lessee for life died in the beginning of the month of December last, having paid his half-year's rent on the 12th of July preceeding, and having, in the ordinary course of husbandry sown his autumn crops of corn. The deceased made a will and appointed an executor.

Is the lessor entitled to any, and (if any) to what amount of rent for the time that has elapsed since the 12th of August last? Is the executor entitled to the crops sown? and if so, has the lessor any claim in respect of the land so sown in corn, which of course will not be reaped till next autumn?

A SUBSCRIBER.

SELECTIONS FROM CORRESPONDENCE.

CERTIFICATE DUTY.

To the Editor of the Legal Observer.

Sir,

OBSERVING in a recent number of your journal the recommendation of a correspondent that some tax should be suggested to the government in lieu of the certificate duty, with a view to induce the alleviation of attorneys and solicitors, it seems to me an ample source of revenue might be derived from those means which were given up to the profession and law stationers at the time the statute was passed creating the certificate duty. I believe I am correct in the surmise, that all parchment to be used in legal proceedings was originally issued and sold by the government, and in order to keep up the amount of the returns produced, a very small number of folios was permitted to be ingrossed on each skin. Professional gentlemen have ever since been degraded into dealers in parchment and paper, and sell these articles to their clients on the face of their bills of costs, while the stamp acts expanded the number of folios on each skin, and other statutes required certificate duties to be paid. Were the government to resume the sale of the parchment only, and repeal the boons granted to railway companies and other public bodies who are not required to affix stamps to their conveyances and public documents, I think an amount would be derived to the national revenue sufficient to meet any "deficit" which might be occasioned by the repeal of the act of parliament directing the payment of the certificate duty, and any obloquy which may attach to the profession from the sale of parchment and paper, be removed.

ATT. AD. LEG.

LEGAL EXAMINATION HONORS.

Sir,

It appears to me that there is but one opinion as to the propriety of granting some reward or distinction to those who may, at each suc-

cessive examination prove themselves entitled to it, and that the difficulty now is merely as to the manner in which this can be best done, and who is to take the first step.

I would beg leave, through the pages of your journal, to suggest to my fellow-articled clerks that a meeting should be convened for the purpose of having the subject fully discussed, and for taking such steps (either by appointing a deputation to wait on the examiners or otherwise) as should be deemed most advisable.

Let some onward step of this kind be taken, and I have little doubt a plan will soon be formed in every way calculated to carry out the object in view, and that the examiners will readily take measures to follow it up.

W. M.

EXAMINATION.—SERVICE OF CLERKSHIP.— DUTY OF SOLICITOR.

Mr. Editor,

Many young men have the misfortune to be articled to gentlemen of such limited practice, that during the five years they have not an opportunity of seeing a chancery suit conducted, or any proceedings in bankruptcy pass under their notice. If this is the case, how can the clerk answer the questions at the examination given under these heads of the law? Would the examiners make much allowance? How many questions are expected to be answered? Cannot a clerk, thus circumstanced, oblige the principal to allow him to spend part of his articles in town?

The attorney covenants to get his clerk admitted. Often are clerks obliged to spend twelve months in town after having passed five years in the country, because the practice of the attorney has been so small that it has been impossible to qualify themselves for examination.

Another very great complaint is often made, and that is, attorneys obliging their clerks to ingross deeds and fair-copy papers from one month's end to another, eight or nine hours in the day. What time can a young man have to study after being thus employed?

There ought to be a stated time fixed in the articles for a clerk to employ himself in the drudgery of an office. Many attorneys keep no other than an articulated clerk, and then the whole of the ingrossing, fair copying, and letter copying, is to be done by him.

It is a very great shame that clerks should be put to the expense of spending time in town after serving their articles in the country, especially when they have studied all in their power, and the fault rests with the attorney. Clerks ought to be allowed at least four hours a-day for reading the first four years, and six hours, during the last twelve months.

O. O.

CANDIDATES

WHO PASSED THE HILARY TERM EXMINATION, 1842.

<i>Clerk's Name.</i>	<i>Name and Residence of Attorney to whom articulated, assigned, &c.</i>
Allenby, Henry Hynman	Joseph Moore, Lincoln.
Allison, John Pick	William Whytehead, Thirsk, cy. York; assigned to Thomas Swarbeck, Thirst.
Bailey, Francis	Henry Hall, Clitheroe, cy. Lancaster.
Beaumont, Henry Arthur	Charles Bell, 36, Bedford Row.
Bell, John Lee	William Carrick, Bampton, cy. Cumberland.
Berkeley, Meaurice Henry	John Innes Pocock, 27, Lincoln's Inn Fields.
Bissill, Charles Edward	Charles Pearson, Sleaford, Lincolnshire.
Bonsey, William Henry	Thomas Tindul, Aylesbury.
Bowden, Frederick L. T.	John Saunders Bowden, Aldermanbury.
Boyle, Frederick	Henry Hoppe, 3, Sun Court Cornhill.
Brett, Edward	Charles Goodwin, King's Lynn, Norfolk.
Bronckhorst, Henry Adolphus	John James Forquett, Newport, Isle of Wight; assigned to Richard Meadowcroft, Whitlow, Manchester.
Browne, John William	Augustus Pulsford Browne, Dulverton.
Carpenter, Frederick	Edward Elkins, 59, Newman Street, Oxford Street.
Catterall, John	John Abraham, Preston.
Chandler, Charles	Thomas Salt, Shrewsbury.
Charsley, Frederick	John Charsley, Beaconsfield; assigned to Bryan Holme, 10, New Inn.
Chattock, Henry Harvey	Thomas Chattock, Soichill; assigned to Edmund John Jennings, 4, Elm Court, Temple.
Chevalier, Clement	Charles John Palmer, Great Yarmouth.
Clarke, Robert Eagle	William Clarke, Thetford.
Cobb, John	Samuel Haines, 29, Tavistock Place, Tavistock Square; assigned to David Harrison, 5, Walbrook.
Colman, George Augustus	Park Nelson, 11, Essex Street, Strand.
Cope, Henry, the younger	Henry Cope, Agnes Place.
Cosserat, David Peloquin	Arthur Abbott, Exeter.
Cracknell, John Benjamin	Edward C. Webb, Sion Hill Park, Walcot, Somerset.
Cuff, Joseph	William Crawford Newby, Stockton-upon-Tees; assigned to Oxley Tilson, 29, Coleman Street.
Docker, William	Ralph Docker, Birmingham; assigned to George Croft Vernon, and Luke Minshall, Bromsgrove.
Down, James Dundas	Charles Davies, Southampton.
East, Alfred Baldwin	John Stubbs, Birmingham: assigned to J. W. Unett, Birmingham.
Farrer, George	Timothy Tyrrell, Guildhall.
Fenwick, John William	Richard Barker, North Shields.
Finden, Francis	William Wilton Woodward, and Henry Whatley, of Per-shore, cy. Worcester; assigned to Charles Wooldridge, Winchester, (deceased) re-assigned to Charles Wooldridge, Winchester.
Fisher, Frederick William	James Campey Laycock, Huddersfield.
Fowler, Henry, the younger	John Uppleby, Scarborough.
Freer, Thomas	George Saffery, Market Rasen; assigned to John Nicholson, Gt. Amford, Brigg.
Giddy, Charles	William Hockin, Truro.
Gladstone, William Cockerill	Henry Frederic Holt, 2, New Inn, Strand.
Grant, Frederick Allens	Lawrance Walker, 13, Kings Road, Gray's Inn.
Greatley, John	William Lowe, Birmingham; assigned to William Andrew, Manchester.
Griffith, Morris	John Hughes, Bangor.
Hair, Thomas	George Price Hill, Worcester; assigned to Henry Maddocks Daniel, Worcester, and Kidderminster.
Hayward, Alfred, jun.	Alfred Hayward, Brackley.
Hooper, John	William Francis Ditrey, Newton Abbot.
Hudson, John	Edmund Sharp, 2, Devonshire Terrace, St. Marylebone.
Hughes, David	William Overton, 25, Old Jewry.
Juckes, George	Thomas Harley Kough, Shrewsbury.
Jefferson, Joseph	John Steel, Cocker mouth; assigned to Charles Bischoff, 8, Copthall Court.
Jenkyn, James	John Carnell, Tunbridge.
Jenkins, Richard	John Jackson Price, Swansea.

<i>Clerk's Name.</i>	<i>Name and Residence of Attorney to whom articulated, assigned, &c.</i>
Jennings, Thomas Robert	Joseph Crew Jennings, Evershot; assigned to James Welsh, Severton, cy. Somerset; re-assigned to William Dean, 109, Guildford Street, Russell Square.
Johnson, Thomas	Thomas Mason, Lancaster.
Jones, William	Charles Thomas Woodsman, Newtown, Montgomeryshire; assigned to John Radcliffe, 2, Exchange Street, West, Liverpool.
Knowles, Thomas	Edward Worthington, Manchester.
Lanham, John Slade	Thomas Coppard, Horsham, Sussex.
Lamb, Frederick	Robert John Lamb, Wakefield.
Marshall, Thomas	Luke Palfreyman, Sheffield.
Marshall, John	Richard Seaton Wright, 15, Golden Square.
Mason, Edwin Farrar	Samuel Danks, Birmingham.
Mathews, John	William Reece, Ledbury.
Miles, John	Henry Young, 12, Essex Street.
Moger, Francis Horace	Samuel Batchellor, Bath.
Morgan, William	Richard Emery, Shrewsbury.
Newton, Alfred	George Game Day, St. Ives.
Nicoll, Henry	Richard Carpenter Smith, 27, Bridge Street, Southwark.
Norman, John	Felix John Hamel, Tamworth.
Norris, Frederick William Nory	James Edward C. Morris, Halifax.
Norton, Thomas	William Wybergh How, Shrewsbury; assigned to Frederick, Ouvry, Tokenhouse Yard.
Orlebar, Charles Samuel	George Thomas Raitton, Willoughby, Weymouth, and Melcombe Regis, afterwards of Bath; assigned to Benjamin Edward Willoughby, 13, Clifford's Inn.
Owen, William	John Shaw Leigh, Liverpool.
Pearse, James	John Gibberd Pearse, Southmoulton.
Pearse, John	William Burd, Okehampton.
Pearson, Justly	Charles Hill Pearson, 5, Serjeant's Inn, Fleet Street.
Pennington, William George	Lawrence Desborough, 6, Size Lane.
Peters, Edward	John Brook, York.
Pickup, John	Thomas Woodcock, Haslingdon.
Powell, Thomas Wilde	Thomas Townend Dibb, Leeds.
Preston, Arthur	Roger Kerrison, Norwich.
Radcliffe, Richard, the younger	George James Duncan, Liverpool; assigned to Richard Radcliffe, the younger, Liverpool; re-assigned to George James Duncan, and assigned again to Richard Radcliffe, senior.
Rands, George	Frederick Chase, Luton, cy. Bedford.
Rawlings, James	Mark Kennaway, Southernhay, Exeter.
Rawlins, Thomas	John Frampton, Cerne Abbas, Dorset.
Rees, Isaac Davies	John Trevillian Jenkin, Swansea.
Rositer, Ernest	Broome Pinniger, Newbury.
Searle, Edward	Henry Parke, Gray's Inn; assigned to Francis John Gunning, Cambridge.
Sidney, William Henry Marlow	Henry Hutchinson, Darlington; assigned to William Grey, Selksworth, cy. Durham, and William Crawford Newby, Stockton.
Sills, Robert	John Vaughan, Heaton Norris, Lancaster.
Stenning, Charles	Frederick Smith, 3, Basinghall Street.
Stileman, Richard	Richard Dawes, Angel Court, Throgmorton Street.
Sudlow, Alfred	J. J. J. Sudlow, 20, Chancery Lane; assigned to William Fisher, same place, re-assigned to Josiah Wilkinson, 5, Chancery Lane.
Taunton, John, the younger	Christopher Vickery, Bridgman, Tavistock.
Titterton, John	Amdell Francis Sparkes, Bridgnorth, cy. Salop.
Twiggs, William Edward	John Ward, Burslem, cy. Stafford.
Upton, John Everard	Thomas Everard Upton, Leeds.
Vickers, James Benjamin	Thomas Mortimer, Manchester.
Walsh, William Henry	Joseph Dobbins, Furnival's Inn.
Walsh, James William	Benjamin Goode, 44, Howland Street, Fitzroy Square.
Waltham, Richard	Hugh Thomas Shaw, Ely Place, Holborn.
Weightman, James Milward	Alexander William Grant, 13, King's Road, Gray's Inn; assigned to Arthur Walker, 18, King's Road, Gray's Inn.
Williams, George Henry	Thomas French, Eye, Suffolk.
Woods, John	Edmund Wilkinson, Liverpool.
Young, Robert	John Adolphus Young, St. Mildred's Court.

SUPERIOR COURTS.

Rolls.

PRACTICE.—AMENDMENT OF BILLS.

The Court will not make an order for the amendment of a bill after the time allowed by the orders for the purpose has expired, unless the delay is clearly accounted for, and it be shown that the amendments are material.

Pemberton moved for leave to amend the bill in this case. The bill was filed on the 24th of April, 1840, and the answers having been put in, was amended the 13th of March, 1841. The answers to the amended bill were filed the 22d and 28th of May, 1841, and on the 22d of July exceptions were taken to the answers, but were subsequently abandoned. On the 6th of November last, an order was obtained for dismissing the bill against one of the defendants. The time had therefore only expired about four days.

Turner, contrà.—The affidavit merely stated the proceedings, but did not account for the delay; and the plaintiff was also bound to make out a special case, before the Court would interfere.

The *Master of the Rolls* said that the affidavit in support of such a motion must first shew why the parties came so late; and next, that the amendments are material, which had not been done in this case; but as only four or five days had elapsed since the expiration of the time limited by the order, the affidavit might be amended.

Robinson v. Wall, December 13th, 1841.

Vice Chancellor of England.

PRACTICE.—COSTS.—DISMISSAL OF BILL.

A defendant is entitled to the costs of a motion for dismissal of bill, although the plaintiff undertake to set the cause down on bill and answer, instead of giving an undertaking to speed.

Romilly moved that the bill in this cause might be dismissed for want of prosecution, and the only question was with regard to the costs of the motion. The plaintiff, it appeared, was willing to give an undertaking to set the cause down on bill and answer, and he contended that as that would tend to a more speedy hearing of the cause, the defendant would be benefited, and he ought not, therefore, to be liable for the costs of the motion, as he would if he had given an undertaking to speed under the 16th amended order of 1828; but this objection, he submitted, could not prevail.

The *Vice Chancellor* said, there was not such a distinction as should deprive the defendant of the costs of the motion.

Wilkinson v. Raithby, Jan. 20th, 1842.

CONSTRUCTION OF ACT OF PARLIAMENT FOR THE FORMATION OF A CANAL, AS TO COSTS.

Where an act of parliament for the formation of a canal, enables the projectors to take lands and pay the purchase money into Court, for the purpose of being laid out in the purchase of other lands, and directs the company to pay the costs of such re-investment, it is necessary that the act should be strictly followed, to entitle the parties beneficially interested in the money so paid in, to costs.

The petitioner in this case, Mr. Hugo Charles Meynell Ingram, was entitled in tail to certain lands, which had been taken possession of by the proprietors of the Aire and Calder Navigation. The act for completing this navigation was passed in the ninth year of the reign of George the fourth, and according to its provisions, the purchase money for any lands that might be required for the purposes of the undertaking, belonging to any tenant for life or in tail, was to be paid into the Court of Exchequer, to the credit of the company, for the purpose of being applied by them in the purchase of other lands to be settled upon the same trusts as the lands so purchased and taken were held; and it was also enacted, that it should be lawful for the said court to order the expences of all purchases, to be from time to time made in pursuance of the act, or so much of such expences as the Court should deem reasonable, to be paid by the said proprietors out of the monies to be received by virtue of the act. In pursuance of the above provisions, the purchase-money of the lands, belonging to the petitioner, had been paid into Court, but instead of his requiring the amount to be laid out in the other lands, he had barred the entail, and now applied to the Court for an order that such purchase money should be paid to him, and that the costs of the application should be paid by the company.

Richards, for the petitioner, cited *Ex parte Morthewick*, 1 Y. & C. 166; *Re Trufford*, 2 Y. & C. 522.

Wilcock for the company; *Vansittart Neale*, for the executors of Lady William Gordon.

The *Vice Chancellor* said, that as the act only directed the payment of costs by the company in certain cases, and the petitioner's case was not within the words of the act, he could not order costs to be paid to him.

Wilcock then applied for the costs of the company, to be paid by the petitioner, as they had been brought before the Court unnecessarily.

Richards, contrà, urged that the petitioner had a right to take the opinion of the Court upon the subject; but

The *Vice Chancellor* said, that *prima facie*, there was nothing in the act to entitle the petitioner to costs. He thought he could find an analogy, and had failed, and he must therefore pay the company's costs.

In the matter of the undertaking of the Aire and Calder Navigation, January 15th, 1842.

[It is to be remarked, that in most of the re-

cent acts for purposes similar to those in the above case, the provisions for the payment of costs extend to all applications which may be necessary in order to obtain payment out of Court of monies paid in pursuant to the acts. Ed.]

Vice Chancellor Wigram.

COSTS.—PROVISIONAL ASSIGNEE.—MORTGAGEE.

A provisional assignee is not entitled to have his costs paid by a mortgagee, in a suit for foreclosure against an insolvent mortgagor, where such assignee does not disclaim, but puts in an answer.

Quære, whether the disclaimer would make any difference?

A bill was filed by a mortgagee against an insolvent mortgagor, for foreclosure. It was admitted that the foreclosure must be made. The provisional assignee had put in an answer, and the plaintiff brought the case to a hearing, when the decree of foreclosure was granted, the only question being as to the costs of the provisional assignee.

Mr. Reynolds for the assignee, insisted that, regard being had to the duties of a provisional assignee, he ought not to be called upon to disclaim, until it had been ascertained whether the estate was worth redeeming. The mortgagee ought to pay the costs, and might add them to his debt.

Mr. Chandless, for the plaintiff, objected to being called upon to pay costs, even on the terms of being allowed to add them to his debt. The mortgagee had advanced as much as his security was worth.

The following cases were cited:—*Clarke v. Wilmot*, Law Journal, November 1841; *Woodward v. Huddon*, 4 Simon 606; *Boswell v. Tucher*, 1 Beav. 493; *Peake v. Gibbon*, 2 Russ. & Myl. 354; *Mundy v. Mundy*, 1 Ves. & B. Pugh v. Hunter, per Lord Costenham.

His Honor, having taken time to consider his judgment, said, he thought that a provisional assignee stood in the same position as the insolvent debtor, and neither one nor the other had a right to impair the security of the mortgagee by increasing the charge upon it. As to the non-disclaimer, he did not mean to intimate that, even if the assignee had disclaimed, it would have made any difference.

Appleby v. Duke, H. T. 1841.

Queen's Bench.

[Before the four Judges.]

COMPETENCY OF WITNESS.

In an action by the indorsee against the acceptor of a bill of exchange, the drawer, by the indorsement of his name upon the record, pursuant to the provisions of the 3 & 4 W. 4, c. 42, s. 26, will be made competent to prove, on the part of the defendant, that the acceptance was made, partly for the drawer's accommodation, and partly on an

agreement for a loan of money, which money had not in fact been advanced.

Assumpsit on a bill of exchange for 250*l.*, drawn by Webb upon, and accepted by the defendant, indorsed by Webb to one Bolden, and by Bolden to the plaintiff. The first plea denied the acceptance, the second the indorsements, and the third stated that (before the drawing and accepting of the bill), Webb owed Bolden 300*l.*; that Webb and the defendant had applied to Bolden for a further loan of 50*l.*, and that to secure the re-payment of the 200*l.* and the further advance, the defendant was to give his acceptance for 250*l.*; that a bill for that amount was accordingly drawn, accepted, and indorsed to Bolden, and delivered to him on condition that he should advance the further sum of 50*l.* to Webb and the defendant; but that Bolden did not so advance the sum of 50*l.*, and that Bolden indorsed the same to the plaintiff without consideration. At the trial before Mr. Justice Coleridge, at the sittings after Trinity Term 1840, Webb, who was called on the part of the defendant to prove the facts set out in the plea, was objected to, on the ground that he had a direct interest in defeating the plaintiff's action. His name was, however, indorsed on the *postea*, and the learned Judge admitted him. On the third plea, a verdict was given for the defendant, but on the other pleas the verdict was for the plaintiff. In Michaelmas Term, Mr. Platt obtained a rule for a new trial on the question of the admissibility of the witness Webb.

Mr. Kelly and Mr. Hoggins shewed cause. Independently of the stat. 3 & 4 W. 4, c. 42, s. 26, Webb would have been a competent witness, as in this case neither the accepting nor the drawing could be regarded as merely for the accommodation of the drawer: the drawing was in conformity with a contract which had never been fulfilled; to this contract the defendant was a party, and he now defends the action on the ground of that contract, and not at the request of the drawer. At all events, he cannot be liable for more than the amount of the bill, and is therefore indifferent as between the parties. It may be doubted whether the decision in *Jones v. Brent*^a is now sustainable. Still if so, the witness will be made competent by the stat. 3 W. 4, c. 42, s. 26. *Faith v. Mc Intyre*.^b If the present defendant can recover costs against Webb in another action, it would be only by proving the judgment recovered in this. The record must be referred to.

Mr. Joy, in support of the rule—*Jones v. Brent* is an authority to shew, that previous to the passing of the act, the drawer of an accommodation bill would not be a competent witness for the defendant. The authority of this case has been confirmed by a variety of subsequent decisions. *Edmunds v. Lowe*,^c *Lambles v. Clarke*.^d It must be admitted, that

^a 4 Taunt. 464.

^b 7 Car. & Payne, 44.

^c 8 Barn. & Cr. 407. ^d 1 Barn. & Ad. 809.

a direct interest in the event of a suit will make a witness incompetent to give evidence on behalf of the party to whom his interest would naturally incline him. Here the witness being the drawer, does not stand indifferent as between the parties. If the verdict should be for the defendant, he will be liable to the plaintiff in a subsequent action for the amount of the bill only. If the verdict, however, should pass for the plaintiff, Webb will be liable, not only for the amount of the bill, but also the costs of the defence in this action. His interest, therefore, is a direct interest to the amount of those costs. The action against the drawer would not be on the bill, but would be special, for not indemnifying the acceptor for accommodation from the costs; and it may be fairly doubted, whether, to prove the amount of costs, it would be necessary to produce the record. The stat. 3 & 4 W. 4, c. 42, s. 26, would not then apply. That statute was passed expressly for the purpose of removing the objection to the competency of the witness, arising from the mere circumstance that the verdict or judgment might be used for or against him. To those cases is its operation limited entirely; but it leaves untouched every other ground of objection. It applies, therefore, to cases where the liability is incurred solely by means of the verdict or judgment, as in actions of tort, and this will be found to be the ground on which have been decided the cases of *Yeomans v. Legh*,^e *Puhle v. Hollings*,^f *Creevey v. Bowman*.^g Here the liability to costs is entirely independent of the record in this suit. The authorities already cited clearly establish the witness's liability to these costs, and it cannot be contended, that the mere indorsement of his name on the record, will deprive the plaintiff of a clearly established right—*Burgiss v. Cuthill*,^h *Stanley v. Johnson*,ⁱ *Wedgwood v. Hartley*,^k *Slegg v. Phillips*.^l The same rule prevails in Courts of Equity. *Davis v. Morgan*,^m and the cases there cited. *Cur. adm. vult.*

Lord Denman delivered judgment.—This was an action by the indorsee against the acceptor of a bill of exchange. The plea was, that before the making of the bill, the drawer was indebted to one Bolden in the sum of 200*l.*; that the bill was given for that sum, and also for a further sum of 50*l.*, which was to be advanced by Bolden to the drawer, but that no such advance was made, though the bill was duly drawn and accepted. The plea further alleged, that the indorsement was made without consideration; the plaintiff sued on account of Bolden and not for himself. Under the circumstances, the question is, whether Webb was competent as a witness for the plaintiff. The case of *Fuith v. Mc Intyre*ⁿ was cited,

and we think that it is conclusive on the subject, and that the party is rendered competent as a witness on having his name indorsed on the record.—The rule will therefore be discharged.

Rule discharged.—*Kelpark v. Major*, H. T. 1842. Q. B. F. J.

WITNESS.—PERJURY.

A person who has been convicted of subornation of perjury, cannot, in any form, give evidence in a court of justice.

In this case a rule had been obtained to take off the file an affidavit sworn by a person, who, it was discovered, had been convicted some years since of the crime of subornation of perjury.

The *Attorney General* shewed cause against the rule. It is true that a person convicted of this offence cannot legally be admitted as a witness in a court of justice, nor can he in any way depose to facts which are to be used to impeach the conduct of others; but he may be allowed to swear to facts in his own exculpation, and most certainly he may do this in the form of an affidavit, otherwise he may be without all legal protection.

Mr. Warren was in support of the rule.

Per Cur.—The distinction now taken is not supported by reference to any authorities, nor does it seem to be justified on principle. Swearing an affidavit is as much giving evidence as being examined in a witness box.

Rule absolute.—*In re James Allen*,^a H. T. 1842. Q. B. F. J.

Queen's Bench Practice Court.

SEVERAL PLEAS.—STRIKING OUT PLEAS.

The Court will not allow a defendant to plead non-assumpsit, and that part of the materials of which the goods forming the plaintiff's demand are composed are illegal according to the provisions of 10 Wil. 3, c. 2, and 6 Anne, c. 8; and if he has pleaded such pleas, the Court will compel him to strike out one.

In this case, which was an action for goods sold and delivered, brought by a sailor, the defendant pleaded, first, *non assumpsit*; and secondly, that the clothes forming part of the claim had buttons on them made of materials rendered illegal by 10 W. 3, c. 2, and 6 Anne, c. 8. An application to strike out the other plea was made by *Hoggins*, and a rule nisi for that purpose obtained. Against this

Knowles shewed cause, and contended that there was no ground for making the present rule absolute. The plea in question might or might not be good. If it was bad the plaintiff might demur to it. The fact of its being demurrable was no ground for striking it out.

Hoggins, in support of the rule, was stopped by

Patterson, J.—The plea is pleaded to the whole cause of action, whereas it can only be

^e 2 Mee. & Welsb. 419.

^f 1 Moo. & R. 468. ^g *Id.* 496.

^h 6 Car. & Payne 282; S. C. 1 Moo. & R. 315.

ⁱ 2 Moo. & R. 103. ^k 10 Ad. & El. 619.

^l 4 Ad. & El. 352; 6 Nev. & M. 360.

^m 1 Beav. 405. ⁿ 7 Car. & Payne, 44.

^a See *ante*, p. 218.

an answer to part. The fact of the buttons being illegal cannot make the contract for the coat illegal. If the defendant chooses to plead such a plea, he must plead it alone. The present rule must be drawn up accordingly.

Rule accordingly. — *Goodman v. Morrell*, M. T. 1841. Q. B. P. C.

SPECIAL SERVICE OF PROCESS.—ENTERING APPEARANCE.

The Court will allow an appearance to be entered for a defendant, where it appears that there is reason to believe that the defendant has received the process, although it has not been personally served.

Ogle moved for leave to enter an appearance for the defendant, on an affidavit disclosing these circumstances: The deponent had proceeded to the house of the defendant with a writ of summons. He had there inquired for the defendant, but had not been able to see him, and therefore he served a female there, whom he believed to be the defendant's wife. The defendant subsequently called at the office of the plaintiff's attorney, and made an offer to compromise the action. It was submitted that these facts shewed that although the process had not been served *personally* on the defendant, it must have come to his hands. The plaintiff, therefore, was in a situation to enter an appearance for the defendant.

Williams, J.—I think the defendant must be taken to have received the process, and therefore the plaintiff may enter an appearance for him.

Rule granted.—*Robertson v. Furr*, H. T. 1842. Q. B. P. C.

SERVICE IN EJECTMENT.—AGENT.—SPECIAL SERVICE.

A defendant in ejectment, having absconded, only leaving a small quantity of wearing apparel on the premises, and a person appearing on the premises, who refuses to state where the defendant is gone, service on him may be effected as good service on the defendant.

Pushley moved for leave to sign judgment against the casual ejector.—It appeared from the affidavit supporting the application, that the defendant, who was the tenant of the lessor of the plaintiff, had absconded, leaving nothing but a small quantity of wearing apparel on the premises. A person named Colton was, however, there, to whom an application was made for particulars as to the defendant; he refused to give any information with respect to him. It was submitted, that under the circumstances, the plaintiff's lessor might have a rule *nisi* for judgment against the casual ejector.

Williams, J.—I think you may, under the special circumstances of the case, as disclosed in the affidavit, have a rule *nisi* for judgment against the casual ejector, and the service may be effected on Colton.

Rule *nisi* accordingly.—*Doe dem. Lord Rudnor and others v. Roe*, H. T. 1842. Q. B. P. C.

CHANGING VENUE.—AMENDING ORDER.—SPECIAL APPLICATION.

An order having been made for further time to plead by consent, and the defendant having consented to have the usual reservation, the right to move to change the venue struck out of the order, the Court would not amend that order by restoring those words; but left the defendant to wait until issue had been joined, and then to make a special application.

In this case, the defendant requiring further time to plead, an order by consent for that purpose was made, and the defendant consented that the usual clause that this enlargement of the time should be made without prejudice to any application to change the venue, should be struck out. The defendant had not pleaded, &c.

Willmore now made an application to have the words in question restored, as the defendant wanted to change the name, on the common affidavit.

Patterson, J., thought that as the defendant had consented to the clause being struck out of the order, and as there was no suggestion of any mistake, the words in question could not be restored. If any such suggestion was made, the case might be different. An issue was not yet joined, the applicant was too soon to make a special application, and the defendant could not change the venue on the common affidavit, on account of the order made by consent; the only course open to the defendant was, therefore, to wait until issue was joined, and then make a special application.

Rule refused.—*Keynes v. Keynes*, M. T. 1841. Q. B. P. C.

DISTRINGAS.—DEFENDANT'S KEEPING OUT OF THE WAY.—ACTOR.

The Court granted a writ of distringas against an actor who appeared every night on the stage, but access could not be obtained to him in any other way.

James moved for leave to issue a distringas against the defendant on the ground of his keeping out of the way to avoid service of the writ of summons. The defendant was Mr. Charles Matthews, the comedian. Various calls had been made at the Theatre Royal Covent Garden, where he was ordinarily to be found, and no information could be procured from the persons at the stage door, and his residence was also undiscoverable. Every night, however, Mr. Matthews was to be seen on the stage as an actor. The public, therefore, could have access to him, though the plaintiff's attorney's clerk could not.

Williams, J.—I think you may take the writ of distringas.

Writ granted.—*Stokes v. Matthews*, H. T. 1842. Q. B. P. C.

Common Pleas.

TIME OF SERVICE OF RULE FOR SPECIAL JURY.

On the 11th January, the defendant in replevin obtained a rule for a special jury, which he served on the 15th, the cause being set down for trial on the 19th: Held, that he was not entitled to the benefit of his rule for a special jury, by reason of the dilatoriness of his proceedings.

Mr. Serjt. Bompas had obtained a rule calling upon the defendant to shew cause why the rule for a special jury, granted upon his application, should not be discharged. It was an action of replevin, and the rule for the special jury was moved for on the 11th January, and was served on the 15th; the cause being set down for trial, and notice of trial given for the 19th (the first sittings in term). By the R. G. H. T. 1 Vict. (Jerv. Rules, p. 153) it was ordered that no application for a special jury in replevin should be granted, unless made six days before the day of trial.

Mr. Serjt. Channell now shewed cause, and contended that the case was strictly within the rule of Court, the rule for the special jury having been obtained on the 11th January, and the day of trial being the 19th.

Bompas.—The defendant had lost the benefit of his rule, by not proceeding upon it promptly. (*Chuck v. Harris*, 9 Dowl. P. C. 68; *Bush v. Pring*, *ib.* p. 180.)

Tindal, C. J.—The principle laid down by the courts is, that parties must shew that they are using ordinary diligence, (*Gunn v. Honeyman*, 2 B. & Ald. 400) so as to bring the cause to trial on the day for which notice is given. We think that the service of the rule for the special jury was too late. The present rule must therefore be made absolute.

Rule absolute, for discharging rule for special jury.—*Phillips v. Keily*, H. T. 1842. C. P.

SERVICE IN EJECTMENT.—BANKRUPTCY OF TENANT.

Where the tenant in possession of premises, in respect of which an action of ejectment was brought, had become bankrupt, service of the declaration and notice on the bankrupt, on the official assignee, and on the messenger in possession, was held sufficient to entitle the lessor of the plaintiff to move for judgment against the casual ejector.

Mr. Serjt. Channell moved for judgment against the casual ejector. The tenant in possession was personally served with the declaration and notice on the 10th January, but before that time he had become bankrupt; service had been also effected on the official assignee, and on the messenger in possession, but not on the creditors' assignee. *Doe d. Baring v. Roe*, 6 Dowl. P. C. 456, however, shewed this to be sufficient.

Per Curiam.—Rule granted. *Doe d. Johnson v. Roe*. H. T. 1842. C. P.

LEGALITY OF STEEPLE CHASING.—18 GEO. 2, c. 34.—3 & 4 VIC. c. 5.—EFFECT OF.

A steeple chase is within the protection of the 11th section of the 18 Geo. 2, c. 34, which applies to all races for stakes of the value of 50l. or more, run at any place within the kingdom.

The declaration was in debt, and stated that the plaintiff was the owner of a mare called Matilda, and that the defendant was the owner of a brown mare; that it was agreed between the plaintiff and the defendant that their said mares should run a race of four miles across the country, each mare to carry thirteen stone, and the race to come off on the 1st March, 1841; Thomas Holyoke, Esq. to be umpire, and his decision to be final. The declaration alleged that it was further agreed between the parties that if the mare of the plaintiff came in first, the defendant should pay to the plaintiff the sum of 100l., play or pay; but that if the mare of the defendant should beat the mare of the plaintiff, then the plaintiff should pay to the defendant the sum of 25l. p. p. The declaration then alleged mutual promises, that the race took place according to the terms of the agreement, and that the umpire had decided that Matilda won the race, yet that the defendant had not paid the sum of 100l., according to the agreement. The defendant pleaded *non assumpt*; secondly, that the mare of the plaintiff did not beat the mare of defendant; and thirdly, a plea alleging that the race was not a legal race, within the meaning of the statute. At the trial at the Summer Assizes for Shrewsbury, in the year 1841, the plaintiff obtained a verdict.

Mr. Serjt. Ludlow, having in Michaelmas Term moved for a rule nisi in arrest of judgment, on the ground of the illegality of the race,

Mr. Serjt. Talfourd now shewed cause. The first statute which acknowledged horse-racing was the 13 Geo. 2, c. 19, but all the provisions of that act, which affected this subject were repealed by the 3 & 4 Vic. c. 5. The 18 Geo. 2, c. 34, had recognized the previous act of the same reign, and the enactments of this last mentioned statute were now unrepealed, and it was upon them that this case must be decided. The important clause was the 11th, and that section, after referring to some provisions of the 13 G. 2, c. 19, with regard to the weights to be carried by race horses, provided that "it shall and may be lawful for any person to run any match, &c. for any plate, &c. of the value of 50l. and upwards, and at any place or places whatsoever." It was sought to have this rule made absolute upon the ground that this not being a race run upon a regular course, it was not within the protection of the statute; but these words of the act must be conclusive. The object of the legislature had been to improve the breed of horses, which this sport was also eminently qualified to promote. The cases of *Ximenes v. Jacques*, 6 T. R. 499, and *Whaley v. Pajot*, 2 Bos. & P. 51, were referred to, as well as the case of *Bitmead v. Gale*, 4 Burr. 2433.

Mr. Serjt. *Ludlow*, in support of the rule, relied upon an opinion expressed by Lord *Eldon* in *Whaley v. Pajot*, to the effect that races coming within the description of "running on the turf," were alone within the protection of the statute. He contended also that as all the provisions of the 13 G. 2, c. 19, relating to horse racing, were repealed by the 3 & 4 Vict. c. 5, the sport was rendered altogether illegal.

Tindal, C. J.—The difficulty which is thrown into this case by the last argument of my brother *Ludlow*, is the conclusion at which it would compel us to arrive, namely, that all horse races are illegal. The object of the stat. 3 & 4 Vict. c. 5, is to encourage and promote horse racing, and not to throw any impediment in the way of its practice; and it would be a most singular thing if we came to a conclusion so entirely opposed to that object as that which is sought for. I cannot help thinking that the law now stands entirely upon the just construction to be put upon the 18 G. 2, c. 34, s. 11; and looking at the terms of that section, I think that they include within their operation all races run at any place within the kingdom, at which the prize is of the value of 50*l.* or more. Certainly the words of Lord *Eldon* in *Whaley v. Pajot*, have a tendency to restrict the meaning of these words; but the particular case in which that opinion was thrown out was capable of decision, and was decided upon entirely different grounds. Upon the whole it appears to me that this case, being quite within the general object which the legislature have sought to attain, falls within the protection of the act of the 18 G. 2, and the rule must be discharged.

Erskine, J., and *Muile, J.*, concurred.
Evans v. Pratt, H. T. 1842. C. P.

SITTINGS IN CHANCERY, After Hilary Term, 1842.

Lord Chancellor.
LINCOLN'S INN.

Feb. 8, 21 } Seals.
March 7, 21 }

Feb. 9 to 19, inclusive
22 to March 5, inclusive,
March 8 to 19, inclusive,
Appeals and Causes.
March 22.—Petitions.

Except such days as his Lordship may be occupied in the House of Lords.

Master of the Rolls.

Feb. 8, 21 } Motions.
March 7, 21 }
Feb. 9 to 19, inclusive,
22 to 24, inclusive,
26 to March 5, inclusive,
March 8 to 19, inclusive,
Pleas, Demurrers, Causes, Further Directions, and Exceptions.

Feb. 25 }
March 22 } Petitions in General Paper.

. Short Causes, and Consent Causes and Petitions, Wednesday, 9th February, and every Tuesday.

Vice Chancellor of England.

Feb. 8, 21 } Motions.
March 7, 21 }

Feb. 9 to 19, inclusive,
22 to March 5, inclusive.
March 8 to 19, inclusive,
Pleas, Demurrers, Exceptions, Causes, and Further Directions,
March 22.—Petitions.

. Unopposed Petitions and Short Causes every Friday, before the General Paper.

Vice Chancellor Bruce.

Feb. 8 and 21 } Motions and Causes.
March 7 and 21 }

Feb. 9 to 19, inclusive,
22 to March 5, inclusive,
March 8 to 19, inclusive,
Pleas, Demurrers, Exceptions, Causes, and Further Directions.
March 22.—Petitions.

. Unopposed Petitions and Short Causes every Saturday, before the General Paper.

Vice Chancellor Wigram.

Feb. 8, 21 } Motions and Causes.
March 7, 21 }

Feb. 9 to 19, inclusive,
22 to March 5, inclusive,
March 8 to 19, inclusive,
Pleas, Demurrers, Exceptions, Causes, and Further Directions.
March 22.—Petitions.

. Unopposed Petitions and Short Causes every Saturday, before the General Paper.

COMMON LAW SITTINGS, After Hilary Term, 1842.

Queen's Bench.
MIDDLESEX.

Tuesday....Feb. 1 }
and daily to } Common Juries.
Wednesday Feb. 9 }
Thursday...Feb. 10 }
and daily to } Special Juries.
Tuesday...Feb. 15 }

LONDON.

Wednesday Feb. 16 }
(Adjournmt day) } Common Juries.
and daily to }
Monday...Feb. 21 }
Tuesday...Feb. 22 }
and daily to } Special Juries.
Monday...Feb. 28 }

Common Pleas.

LONDON.

Adjournment Day Monday Feb. 14

Exchequer of Pleas.

MIDDLESEX.

Tuesday Feb. 1	Common Juries.
Wednesday 2	{ Rev. Causes, (Customs) & Common Juries.
Thursday 3	Common Juries.
Friday 4	{ Revenue Causes, (Excise) and Common Juries.
Saturday 5	Common Juries.
Monday 7	{ Special and Com. Juries.
Tuesday 8	
Wednesday 9	
Thursday 10	Common Juries.

LONDON.

Wednesday Feb. 2	To adjourn only.
Friday 11	Adj. Day. Com. Juries.
Saturday 12	{ Common Juries.
Monday 14	
Tuesday 15	
Wednesday 16	{ Special and Com. Juries.
Thursday 17	
Friday 18	
Saturday 19	
Monday 21	
Tuesday 22	{ Common Juries.
Wednesday 23	
Thursday 24	

The Court will sit at half-past nine o'clock.

PARLIAMENTARY PROCEEDINGS
RELATING TO THE LAW.

QUEEN'S SPEECH.

In her Majesty's Speech on opening the session of parliament on Thursday last, the 3d February, are the following passages relating to *Law Reform*:

"Measures will be submitted to your consideration for the Amendment of the Law of *Bankruptcy*, and for the Improvement of the Jurisdiction exercised by the *Ecclesiastical Courts* in England and Wales."

"It will also be desirable that you should consider, with a view to their revision, the laws which regulate the *Registration of Electors* of Members to serve in Parliament."

NEW WRITS.

In the House of Commons, new writs were ordered for Leominster, in the room of Vice Chancellor Wigram; for Liverpool, in the room of Mr. Justice Cresswell; for Dublin University, in the room of Mr. Baron Lefroy, and for Bandon Bridge, in the room of Mr. Serjeant Jackson, now Solicitor General for Ireland.

THE EDITOR'S LETTER BOX.

"Sigma" requests a definition of "Frith-silver." In the extensive manors of a nobleman in Staffordshire, it is an annual payment made by the constables of the different parishes within the jurisdiction of the several leets, in the nature of a chief or quit rent. Probably it was anciently called Frith-soken; *frith*, peace, and *soken* liberty—a liberty of having frank-pledge, or a surety of defence. Why paid by the constables?

We will attend to the communication regarding Medical Coroners.

"Gent., one, &c." should submit his bill to one of the lawyers in parliament, and no doubt it will receive due attention.

Our publisher will inform "A Subscriber" of the most compendious work on the subject he mentions.

"Spes" should consult the work of Messrs. Montagu and Ayrton.

We apprehend that our readers would object to the insertion of the cases of "Nemo" and "A Subscriber."

The Conveyance Stamp mentioned by T. G. will be sufficient, without the mortgage stamp.

A few copies remain of the Legal Almanac, Remembrancer, and Diary, for the present year.

The Analytical Digest of all reported Cases in all the Courts, will be published on Saturday next. This will be the First Part of a new volume of that Work.

Subscribers having imperfect sets of the Legal Observer, can now be supplied, several numbers having been reprinted.

The General Index to the first twenty volumes, renders the whole complete and easily accessible.

The Legal Observer.

SATURDAY, FEBRUARY 12, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LETTERS

FROM MR. AMBROSE HARCOURT, STUDENT AT LAW, TO MR. THOMAS PRINGLE, OF TRINITY HALL, CAMBRIDGE.

LETTER IV.

Dear Pringle,

THE session of Parliament has now commenced in good earnest, and so far there has been little note of preparation for law reform. Local Courts, we hear not of. Chancery Reform is put out in good nursing, and there appears altogether a lull in the contentions of party. Nevertheless, I humbly consider this as deceitful, and likely to portend, by-and-bye, a storm. But we shall see as to this. I go on to tell you what I think of the Judges.

I left off at Lord Lyndhurst, and I have now to say a word or two about the Vice Chancellors. You know that there are now *three*, and I understand the large arrear of causes, is fast melting away under their triple exertions.

There is, first, Sir Lancelot Shadwell, Vice Chancellor of England, a lawyer, after thirty years' work, certainly in a very good state of preservation. A more hearty, good-humoured looking man, I know not. He seems to be always in a most happy state of mind, at ease within himself, and on good terms with every body. It is undoubtedly this Vice Chancellor that has kept the machine of the Court of Chancery going for many years. Let the Great Seal be in what custody it would; Lord Chancellors might flourish or might fade—Masters of the Rolls

might sit in the morning or in the evening—the great bulk of the business has for many years pressed into the Vice Chancellor's Court, and has been disposed of by him. And certainly, considering all this weight of responsibility, a more smiling face I never saw. The Vice Chancellor's chief judicial qualities, are great quickness, considerable knowledge of practice, and no ordinary general knowledge on the matters usually coming before his Court. Further than this, I am not prepared, from what I hear, to go. He has done little in fixing equitable principles; he has thrown but little light on the true bounds of the jurisdiction of his Court, and he has been too often supposed to have been influenced by particular counsel. Yet he is, doubtless, a pains-taking Judge, who labours, early and late, to get through his business. The appointment of two other Vice Chancellors has necessarily lessened his labours, and the great test of his qualifications for his office, will be his retaining his present business in all that portion of it where an option is given to the suitor. So far I understand, there has been but little decline. Thus I give you the floating opinion of the professional circle that I mix in, and you must only take it for what it is worth. I will tell you about the other Vice Chancellors, when I write again.

Yours truly,

AMBROSE HARCOURT.

X

JUDGMENTS, SO FAR AS THEY AFFECT REAL PROPERTY.

HAVING taken a brief view of the law as it stood prior to the 1st & 2nd Vict. c. 110,^a we shall now proceed to examine such of the enactments of this statute, as relate to judgments against real estates.

But it is to be observed, that none of its provisions extending the remedies of the judgment creditor, affect purchasers or mortgagees *without notice*, and consequently, that as against such purchasers or mortgagees, the creditor must rely solely upon the old law, the 5th section of the 2 & 3 Vict. c. 11, having provided that no judgment, decree, rule, or order, shall, *as against purchasers and mortgagees, without notice thereof*, bind or affect any lands, tenements, or hereditaments, or any interest therein, further or otherwise, or more extensively in any respect, although duly registered, than a judgment of one of the Superior Courts would have bound such purchaser or mortgagee before the 1 & 2 Vict. c. 110, where it had been duly docketed according to the law then in force. But the 6th section provides that nothing in the said recited act, or in that act contained, shall affect any judgment as between the parties thereto, or their representatives, or those claiming as volunteers under them.

Purchasers, however, should be cautious in placing much reliance upon this exemption, as notice might be inferred from slight circumstances, and, if proved, would lay them open to all those more extensive remedies which the previous statute gives to judgment creditors against the land.

The 11th section of the 1 & 2 Vict. c. 110, after reciting the expediency of giving judgment creditors more effectual remedies against the real and personal estate of their debtors, than they possessed under the then existing law, proceeds to enact, that upon any judgment which, at the time appointed for the commencement of that act, should have been recovered, or should be thereafter recovered in any action in any of her Majesty's Superior Courts at Westminster, execution may be delivered of all such lands, tenements, rectories, tithes, rents, and hereditaments, including lands and hereditaments of copyhold or customary tenure, as the person against whom execution is so sued, or any person in trust for

him, shall have been seized or possessed of at the time of entering up the said judgment, or at any time afterwards, or over which such person shall, at the time of entering up such judgment, or at any time afterwards, have any disposing power which he might, without the assent of any other person, exercise for his own benefit, in like manner as execution might then be delivered of one moiety of the lands and tenements of any person against whom a writ of *elegit* was sued out; which lands, &c. shall accordingly be held by the party to whom such execution shall be delivered, subject to such account in the Court out of which such execution shall have been sued out as a tenant by *elegit*, is subject to in a court of equity: and it is provided, that such party to whom any copyhold or customary lands shall be delivered in execution, shall be liable to such payments and services to the lord of the manor or other persons entitled, as the person against whom such execution shall be issued would have been subject to in case such execution had not issued, and shall be entitled to hold the same lands until the amount of such payments and the value of such services, as well as the amount of the judgment, shall have been levied.

The judgment creditor, instead of being confined to the moiety, is enabled, by this section, to take the whole of his debtor's lands. Copyholds, which were not extendible under the Statute of Westminster, are now expressly made extendible equally with freeholds; but with the exception of copyhold and customary estates, and the trusts of terms of years, it would seem that no description of property or interest can be taken in execution under this section, which could not have been extended before the statute.

It has been suggested that terms of years, as well equitable as legal, continue to be unaffected by judgments until execution, on the ground that the enactment is worded in the same manner as that of the Statute of Frauds, which was held not to include chattel interests. Jarm. Conv. by Sweet, 5th vol. p. 48. Sir Edward Sugden, on the contrary, seems to consider that leaseholds are bound in like manner with freeholds. 2 Sugd. V. & P. 401. See also Hayes's Conveyancing, 4th edit. p. 805. And this seems to be the better opinion.

It would be inconsistent that terms of years should be still extendible only for a moiety under the Statute of Westminster, and that they should be bound *at law* only from the time of execution sued, whilst a judgment

^a See *ante*, p. 211, 243.

is, beyond a doubt, made a charge *in equity* by the 13th section, upon the *entirety* of the leaseholds of the debtor, from the time that the judgment is entered up.

Though this section may not be altogether free from ambiguity, it seems in accordance with the language used, and certainly with the spirit of the whole act, to hold that terms of years are included.

It will be readily seen, that cautious purchasers will now make searches for judgments in many cases where, under the old law, searches would have been probably dispensed with. Want of notice, indeed, does protect purchasers from the operation of those new provisions, but for the reason already stated, this fact cannot be safely relied upon. Sir Edward Sugden's advice is, that in no case should a purchaser neglect a search. "It is no longer safe (he continues) to rely upon an outstanding legal estate; the execution of a power, will not defeat the judgment, and it binds equitable as well as legal estates; powers amounting to ownership, as well as actual estates. Even the most solvent person may have an order of some Court against him for payment of costs, which the person obtaining it may choose to make binding upon purchasers; and although the provision in the 2 Vict. c. 11, s. 5, is a great safe-guard to purchasers, yet it would not be wise to rely upon it, as notice may be proved by slight circumstances." 2 Sugd. V. & P. p. 403.

By analogy to the construction which has been put upon the 10th section of the Statute of Frauds, it is apprehended that no equitable interest of the debtor can be taken in execution under the 11th section of this statute, which is subject to incumbrances, or of which, from any other cause, he has not the sole beneficial ownership. *Harris v. Booker*, 4 Bing. 96.

While formerly only those trust estates could be taken in execution of which the debtor's trustee was seised at the time of execution sued (*Hunt v. Coles*, Com. Rep. 226) a judgment is now made a legal lien upon all lands held in trust for the debtor at and at any time after the period of its being entered up; so that a judgment creditor who can fix a purchaser with notice, will not, under the new act, be compelled to resort to a court of equity for relief against the conveyance of the legal estate, subsequently to his judgment, but will be able to take the lands in execution by legal process.

Another important change effected by

this section, has been to deprive an appointment of its ancient effect, in defeating judgments entered up against the donee subsequently to the creation of the power, provided the power be one that the donee is able to exercise for his own benefit *without the assent* of any other person; but here if the appointee is a purchaser without notice, he will, of course, be entitled to the benefit of the 5th section of the 2 & 3 Vict. c. 11, and an appointment will be then as effectual in protecting him from judgments as it was under the old law.

Another consequence of this section is, that the creditor will not be deprived of the benefit of his judgment in cases of joint-tenancy by reason of the death of the debtor in the lifetime of his co-tenant, and before the execution of the *elegit*, but will be entitled to the same remedies against the share which has survived, as he would have had in the lifetime of his debtor.

Under the 11th section, it is conceived that the issue in tail and remainder-men, though not expressly named in it, will, where there is no protector, be bound by judgments entered up against the tenant in tail, inasmuch as he has, in the words of the section, a disposing power, which he might, without the assent of any other person, exercise for his own benefit. The 13th section, however, is express on this point; and in purchasing from such issue or remainder-men, it will now be necessary to search for judgments for the proper period against the preceding tenants in tail. Where there is a protector, the judgment creditor can only attach the lands entailed during the life of the debtor, as he might have done before the act.

If a joint judgment is entered up against the joint donees of a general power of appointment, it would seem that such a power would, under the circumstances, be considered a disposing power within the 11th section.

There seems reason to believe that a general power of appointment by will, is within the meaning of the section, for in this case the debtor has a disposing power which he may execute so as to increase his testamentary estate, and in that sense, for his own benefit.

The object of the statute certainly is, to afford relief to the creditor, to the extent of the debtor's beneficial interest, whether vested, or attainable by execution of a power, or otherwise; and therefore, the enactments must be held to extend to all cases where the debtor has a general uncontrolled power

of appointment, not limited to particular objects, or to specific purposes.

It will be perceived that the 11th section makes no provision for the judgment creditor in those cases where legal execution is from the nature or circumstances of the property impracticable. The 13th section, however, enacts that, a judgment then entered up, or which might be entered up in any of her Majesty's superior courts at Westminster, shall operate as a charge upon all lands, tenements, rectories, advowsons, tithes, rents and hereditaments (including lands and hereditaments of copyhold or customary tenure) of or to which such person shall at the time of entering up such judgment or at any time afterwards be seised, possessed or entitled for any estate or interest whatever, at law or in equity, whether in possession, reversion, remainder or expectancy, or over which such person should, at the time of entering up such judgment or at any time afterwards, have any disposing power, which he might, without the assent of any other person, exercise for his own benefit, and shall be binding as against the persons against whom judgment shall be so entered up, and against all persons claiming under him after such judgment, and shall also be binding as against the issue of his body and all other persons whom he might, without the assent of any other person, cut off and debar from any remainder, reversion or other interest in or out of any of the said lands &c., and that every judgment creditor shall have such and the same remedies in a court of equity against the hereditaments so charged by virtue of this act or any part thereof, as he would be entitled to in case the person against whom such judgment shall have been so entered up, had power to charge the same hereditaments, and had by writing under his hand, agreed to charge the same with the amount of such judgment debt and interest thereon. But it is provided that no judgment creditor shall be entitled to proceed in equity to obtain the benefit of such charge until after the expiration of one year from the time of entering up such judgment, and that no such charge shall operate to give the judgment creditor any preference in case of bankruptcy, unless such judgment shall have been entered up one year at least before the bankruptcy.

Before the statute, a judgment was a mere general lien, and equity, in assisting a judgment creditor who had no means of enforcing execution at law, assumed the jurisdiction which it exercised. As a general rule, courts of equity were

guided as to the extent of the relief by the statute of Westminster, which gave the *elegit* in the first instance: *Stileman v. Ashdown*, 2 Atk. 608; and generally refused to interfere on the creditor's behalf until the *elegit* under that statute had been sued out, as an essential preliminary. *Neate v. The Duke of Marlborough*, 3 Myl. & Cr. 407. But the 13th section of this statute makes a judgment a specific charge upon all the property which is rendered liable to be extended under the 11th section, together with advowsons in gross, property in expectancy, equities of redemption, and trust estates in which the debtor has not the sole ownership, none of which could be extended under the old law, nor, it is conceived, under the 11th section of the new act.

The terms of this section are so comprehensive as to leave no doubt that leaseholds, both legal and equitable, are within its provisions.

This act makes a judgment a lien both at law, and in equity, upon all which the debtor has, and upon all which he can give. If the debtor has a sole power of appointment which he may exercise for his own benefit, the statute, in a sense, executes the power in favour of the creditor, and the judgment becomes an immediate lien upon the lands over which the power extends.

A joint power is not within the act, as the validity of its execution depends upon the assent of another person; and the appointee may with safety disregard even the judgments of which he has notice, if the donee has no ulterior interest. But it becomes an important question, if the debtor be the donee of a joint power with an ulterior estate, whether he can concur with his joint donee in exercising the power so as to defeat the judgment creditor's lien upon that estate. It is a well-known principle that if a person having a power, and an estate subject to the power, makes a lease, or grants any other interest by virtue of his estate, he cannot exercise that power so as to defeat his own act. But a judgment was not considered as an act done by the party, but as a proceeding *in iudicio*, and consequently the donee was able, by means of an appointment, to destroy the creditor's lien. The 13th section of this act, however, provides that every judgment creditor shall have such and the same remedies in a court of equity as he would be entitled to in case the person against whom such judgment shall have been so entered up, had power to charge the hereditaments, and had by writing under his hand, agreed to charge

the same. It will be remarked, that the 13th section gives the judgment creditor "*such and the same remedies*," but without positively stating that the judgment is to have "*the same force and effect*" as a voluntary charge. Without the latter expressions, there is strong ground for contending that a judgment is now to be considered in equity as a charge voluntarily created by the debtor; and it is abundantly clear that if such a charge had been made, a court of equity would not allow it to be prejudiced by any subsequent appointment, except in the case of the appointee being a purchaser for a valuable consideration without notice.

We have seen that a judgment creditor lost the benefit of his security, as against the assignees of a bankrupt, unless the execution was complete before the act of bankruptcy; but this section, by putting the judgment creditor on a footing with an equitable mortgagee, gives him a priority over other creditors, provided the judgment shall have been entered up one year at least before the bankruptcy. On a sale, therefore, by the assignees, it will be necessary for the future to search for judgments against the bankrupt.

The 13th section concludes with a proviso that nothing therein contained shall be deemed or taken to alter or affect any doctrine of courts of equity, whereby protection is given to purchasers for valuable consideration, without notice. The object of this proviso was, that purchasers without notice may be able to protect themselves from judgments by any means which were effectual for this purpose before the statute, so far as the property of the debtor is not extendible under the 11th section. But the particular provision of this act for the protection of purchasers and mortgagees without notice, is rendered unimportant by the more extensive operation of the 2 & 3 Vic. c. 11, s. 5, whereby they are protected from all the provisions of this statute, so far as their tendency is to extend the legal or equitable remedies of the judgment creditor beyond what they were under the old law.

And as to purchasers and mortgagees who became such before the 1st of October, 1838, the 11th and 13th sections provide against any judgment affecting them otherwise than as the same would have affected them if the act had not passed.

Formerly, the creditor was not obliged to account *at law* for more than the extended value. *Price v. Varney*, 3 B. & C.

783. But if the debtor applied to a court of equity for relief, the creditor was compelled to account for the whole that he had received, upon the terms of the debtor allowing interest on the judgment. *Godfrey v. Watson*, 3 Atk. 517. Again, interest upon a judgment was recoverable at law only in the shape of damages; or if the creditor applied to a court of equity, his claim to interest there depended upon his having previously brought an action at law to recover it. *Guant v. Taylor*, 3 Myl. & K. 302. The 11th section of the 1 & 2 Vict. c. 110, however, subjects the creditor to such account in the Court out of which execution shall have been sued, as a tenant by *elegit* is subject to in a court of equity; and the 17th section provides that every judgment shall carry interest at the rate of 4l. per centum per annum from the time of entering up the judgment, or from the time of the commencement of the act, in cases of judgments then entered up, and not carrying interest until the same should be satisfied.

The foregoing observations are equally applicable to decrees and orders of courts of equity, rules of courts of law, orders of the Lord Chancellor, or of the Court of Review in matters of bankruptcy, and all orders of the Lord Chancellor in matters of lunacy, whereby any sum of money, or any costs, charges, or expences, shall be payable to any person; for by the 18th section, such decrees, orders, and rules, are respectively put upon the footing of judgments in the superior courts of common law.

COVENANTS TO SETTLE PROPERTY.

WHEN a person enters into a covenant to lay out money in the purchase of lands, it will be strictly enforced against his heir, if he has assets by descent;^a his personal representatives, if they have assets;^b and, since the 2 W. & M. c. 14, it would seem, against his devisee.

But the great proportion of the cases relate to covenants to settle property at a future time, and as to what property will be bound by such a covenant.

A covenant to settle all the property, real and personal, of or to which the covenantor is seised or entitled at the time of the covenant, is certainly valid and binding on all such property. It is also clear that a covenant to settle all the real estate of which the covenantor, or

^a *Roundel v. Breary*, 2 Vern. 482; *Deacon v. Smith*, 3 Atk. 330.

^b *Lechmere v. Earl of Carlisle*, 3 P. Wms. 211; *Benson v. Benson*, 1 P. Wms. 130.

of or to which he may at any time afterwards or during a particular coverture, become seised or entitled, will be enforced;^c as will a covenant to leave half or any smaller part of all the real and personal estate of a person, whether present or future;^d and if a covenant is entered into to settle a part of all the real and personal estate of or to which a testator may be seised or entitled at the time of his death, a fraudulent disposition to defeat this covenant, as an alienation three days before the death of the testator, will be rescinded.*

The chief point open to doubt connected with this subject, was how far a covenant to settle all the real and personal estate of or to which the covenantor was seised or entitled at the time of the covenant, or might at any time afterwards become seised or entitled, will be enforced or supported in equity. In the case of *Coke v. Bishop*,^f a person entered into articles with another to settle upon him all his real and personal estate which he had or should have, except 3000*l*. Upon these articles a suit was commenced in the year 1664, and a decree made for the defendant to settle all he then had, which was performed; "since that, an attempt was made before us (says Lord *Nottingham*), to have a new decree against the defendant to settle new acquisitions made by him, but I did not think a court of conscience obliged to execute such a strange agreement, any further than it had already been carried, since it tended to the discouragement of all honest industry;" so the suit failed.

Where, however, a person covenanted that he would, on or before a certain day, secure an annuity by a charge upon freehold estates, or by investment in the funds, or by the best means in his power, it would seem that such covenant will create a lien upon any property to which he becomes entitled between the date of the covenant and the day so limited for its performance. This appears from the late case of *Wellesley v. Wellesley*.^g The title of the plaintiff was under articles of separation, in which, for such considerations as the law considers sufficient in such cases, Mr. Wellesley contracted that he would, on or before the 1st of February, 1836, well and effectually, by a charge on freehold estates of inheritance, or by investment in the funds, or by the best means which might then be in his power, secure the annuity. The bill stated that subsequent to the commencement, and before the appointed time, the defendant came into possession of property which enabled him to perform his covenant, and certain acts tending to defeat the security so acquired and promised

to be charged. Lord *Cottenham* thus addressed himself to these facts: "If, at the hearing, these facts being proved, the Court will have no power to make any decree, except that Mr. Wellesley do perform his contract, and no power to act upon the land, then the demurrer must be allowed; but if the Court can act upon the land, then the defendants who have demurred, and are made defendants as trustees of the land, are properly made defendants, and the demurrer must be overruled; that is, in that case, according to the plaintiff's shewing, they will have a decree against them. If there be a contract for sale, and the vendor proceeds so to deal with property as to incapacitate himself from performing his contract, this Court will act upon the property; and legislative provisions now exist, enabling this Court, in certain cases, to exercise this jurisdiction with more effect. In *Prebble v. Boghurst*, 1 Swanst. 309, whilst it was still uncertain whether the agreement affected the lands in question, Lord *Eldon* did not doubt the jurisdiction of the Court to appoint a receiver. If the plaintiff in this case should obtain a decree against Mr. Wellesley, establishing her title to have the annuity charged upon the property, of which the defendants demurring are trustees for him, can it be doubted that the Court would act upon such property for the purpose of enforcing this equity? and if so, the defendants, as trustees of it, are necessary parties for that purpose. The only ground upon which the defendants could contend, with success, that they are improperly made parties to the bill, would be to establish either that the bill must be dismissed against Mr. Wellesley, or that the decree against him can only be against him personally, and that the Court would have no power to effect the property in question; which comes to this, that the Court, being of opinion that Mr. Wellesley was bound to give effect to his contract, and to charge the annuity upon the property of which the defendants are trustees for him, must confine itself to a personal decree against him for that purpose, and could not make any decree against the trustees; but it is clear that the moment the Court declares such right in the plaintiff, these defendants will, at all events, become trustees for the plaintiff to that extent. In *Lyde v. Mynn*, 4 Sim. 505; and 1 Mylne & Keen, 688, a husband had covenanted to charge an annuity, granted to a third person, upon all such property as, in the event of his wife's decease, he should become entitled to, by virtue of her will or otherwise; and having, under her will, acquired an annuity vested in trustees, the party with whom the covenant had been made filed a bill, and obtained a decree against the husband and his trustees, to carry this covenant into effect. I have not, therefore, been able to see how it was possible, supposing the plaintiff's bill to state a case for a decree against Mr. Wellesley, that these defendants could say that they were not properly made parties to this suit; and that there is such a case stated against Mr. Wellesley, cannot be disputed. That this Court will grant a

^c *Prebble v. Boghurst*, 1 Swanst. 309.

^d *Webster v. Mitford*, 1 Swanst. 449 n, and 435 n; *Gregor v. Kemp*, 3 Swanst. 404 n.

^e *Gregor v. Kemp*, 3 Swanst. 404 n; *Jones v. Martin*, 3 Anst. 882. See 7 Byth. by Stewart, p. 589; where other cases on this subject are collected.

^f 3 Swanst. 401.

^g 4 Myl. & Craig. 561.

specific performance of an agreement for a grant of an annuity, cannot now be questioned; and this agreement appears to me to contain within itself all that is necessary to give it legal validity: but if this Court is to execute the agreement, it must do so according to the terms of it. The terms are, on a day certain, to charge the annuity on lands, or on an investment of stock, or by the best means in his power. I think it quite immaterial, for the present purpose, whether this gave to the husband an option, or whether he has other lands besides those vested in these defendants, upon which he can now charge the annuity; because the bill alleges that he refuses to charge it in any manner; and this Court will not permit him, under the pretence of exercising an option, to evade the performance of his contract. In *Deacon v. Smith*, 3 Atk. 323, there was an option; but it did not prevent the Court from acting upon the one alternative. The property acquired, by the arrangement of December, 1834, must be considered as subsequently acquired property; but that contracts to charge property subsequently acquired will be enforced, is sufficiently established, *Lyde v. Mynn*, and the cases upon which that decision was founded, are conclusive upon that subject. The contract is not to purchase lands for the purposes of the agreement; but one alternative is to charge lands in Feb. 1835, and at that time he had a power of charging lands. It is the same as a contract to charge such lands as he might have at that time; and if so, such was *Metcalf v. The Archbishop of York*, 1 M. & C. 547; 6 Sim. 224; and *Lyde v. Mynn*; and such was *Tooke v. Hastings*, as reported in 2 Vern. 97. In *Lewis v. Madocks*, 17 Ves. 48, a contract, upon marriage, to settle all personal estate of which the husband might become possessed during the coverture, was enforced against an estate he had purchased, in part, with personal property so acquired. Being, therefore, of opinion that the contract, as stated in the bill, must, upon the case stated, be enforced against Mr. Wellesley, and that to effect that object the Court will act upon the estates which he had a power of charging in Feb. 1835, and of which the defendants are trustees for him, I think that this demurrer must be overruled."

THE COMMUTATION OF COPYHOLDS.

WE extract the following from the *Times* of Monday last; and are pleased to find that the proceedings under the Copyhold Act are going on so satisfactorily. We understand that there have been numerous individual enfranchisements under the act, but that the following is the first manorial commutation:—

"The first manorial commutation under the Copyhold Act, 4 & 5 Vict. c. 35, has been

effected in the manor of Fareham, in the county of Southampton, in which manor the vicar for the time being is the lord. The inconveniences arising from the copyhold tenure have long been felt to be considerable both by lords and tenants. The income of the lord, arising almost entirely from fines payable on the death of the tenants, was uncertain and fluctuating; in some years considerable, in others nothing at all. The payments were often extremely burdensome on the tenants, and as such payments were increased by any improvement made by them of their property, there was but little inducement to increase the value by building or otherwise. All parties, therefore, were desirous of availing themselves of the provisions of the Copyhold Act, and of coming to an arrangement which, on the one hand, would give the lord a moderate but certain income, grounded on the average of past years, and, on the other, by fixing the payments made by the tenants by way of rent-charge, would allow them to improve their own property in any manner they pleased. The consent of the Bishop of Winchester, who had an interest in the manor as patron of the living, having been very readily given, and all other parties consenting, an agreement for the commutation of the fines to a fixed rent-charge, variable by the price of corn, was come to; and we understand that Mr. Stewart, the secretary of the commission, attended the meeting held on the 1st of February last to hear any statement that might be made by any person interested in the manor, and that subsequently the agreement has been confirmed by the commissioners. This is a very favorable commencement of the proceedings under the act, as by the execution of one instrument (the agreement), with a schedule of appropriation annexed, the rights of all parties have been definitively settled with general satisfaction at a trifling expense."—*Times*, 7th February, 1842.

RECOVERY OF TENEMENTS ACT.

A question has arisen, whether the police magistrates have jurisdiction under the Recovery of Tenements Act, 1 and 2 Vict. c. 74. The words of the Act are, "It shall be lawful for the Justices acting for the district, division, or place within which the said premises, or any part thereof shall be situate, in petty sessions assembled, or any two of them, to issue, &c." And the schedule contains the forms to be used in the proceeding. The notice to be served on the tenant, is, that the landlord will apply to her Majesty's justices of the peace, acting for the district of _____, in petty sessions assembled. The complaint begins, "The complaint of _____, made before us, two of her Majesty's justices of the peace, acting for the district of _____, in petty session assembled." The warrant runs, "We,

two of her Majesty's justices of the peace in petty session assembled."

The Police Act, 2 & 3 Vict. c. 71, establishing the Metropolitan Police Courts, enacts at section 14, "that it shall be lawful for any one of the said magistrates (the magistrates of the Metropolitan Police Courts) to do alone any act which by any law now in force or any law not containing an express enactment to the contrary, hereafter to be made, is or shall be directed to be done by more than one justice, provided always, that none of the said magistrates shall be competent to act as a justice of the peace, either alone or with any other justice or justices, in any thing which is to be done at a special or petty session of all the justices acting in the division, or by the justices of any of the said counties or liberties in quarter session assembled;" and at sec. 42, it is enacted "that no justice of the peace, not being one of the said magistrates, shall take any fee for any act done as justice of the peace within the metropolitan police district, upon pain of forfeiture of 100l;" but this enactment shall not be construed to extend (*inter alia*) to any fees taken at any special or petty sessions of the justices in respect of business which must be transacted at such special or petty sessions.

The police magistrates and the county magistrates within the Metropolitan District, universally act under the impression that it is the business of the former to carry out the Recovery of Tenements Act. They say, that as any two justices may form a petty session, it follows, that whatever may be done at a petty session may be done by one police magistrate; and they consider that the proviso in section 14 of the Police Act points only to *special* petty sessions; that there are in fact within the police district no petty sessions held now that are not special, and that a petty session of all the justices of the division means a special petty session of the justices of the division.

On the other hand, it will be remarked, that the words of the Recovery of Tenements Act, are somewhat remarkable. They differ from many other acts authorising the interference of two justices; as for example, 11 Geo. 2, c. 19, s. 16, providing for the recovery of deserted premises, enacts that it shall be lawful for two or more justices of the peace of the county, riding, division or place, at the request, &c.; and it is contended by those who are opposed to the police magistrates in this matter, that the legislature, in passing the 1 & 2 Vic. chap. 74, intended that the powers thereby given to the justices should be exercised only in petty sessions.

MOOT POINTS.

LEASE.—APPORTIONMENT OF RENT.—CROPS.

With respect to the queries put by "Subscriber," p. 278, *ante*, under this head; assuming that the indenture of demise of July,

1821, contains no proviso in the covenant for payment of rent, or elsewhere, to meet the emergency, the law seems to stand thus: the lessor will not be able to recover any rent accruing due since the last 12th of July; (put 12th of August by mistake), for his case does not come within 11 Geo. 2, cap. 19, which extends to rents reserved on leases which determine by the death of *lessor*; nor is it within the 2d section of 4 Will. 4, c. 22, which comprehends only such payments as are made payable or coming due at fixed periods under any instrument which shall be executed after the passing of that act. At common law, there never was any apportionment of rent in respect of time, for being one contract and one debt, it could not be divided (*Clun's case*, 10 Co. 128, a) upon the principle (Co. Litt. 150, a) "*annua aut debitum judex nec separat ipsum*." The executor of the deceased tenant for life is entitled to the crops sown and other emblements, because, as expressed by Littleton, treating of tenants at will, sec. 68, "he hath no certain nor sure estate." "And, therefore, (Co. Litt. 55, b.) if tenant for life soweth the ground and dieth, his executors shall have the corn, for that his estate was uncertain and determined by the act of God." "And the law in this case driveth him, not to an action for the corn, but giveth him a speedy remedy to enter into the land, and to take and carry it away, and compelleth him not to take it at one time, or to carry it before it be ready to be carried, and therefore the law giveth all that which is convenient, viz. free entry, egress and regress, as much as is necessary." (Co. Litt. 56, a.) And, consequently, when ripe, the executor can enter without committing trespass.

A. E. F.

MORTGAGE.—LEASE FOR A YEAR.

The reply to "Lector," at p. 278, *ante*, will in some degree depend upon the species of assurance it is intended to make use of for the conveyance of the equity of redemption alluded to. Assuming that the mortgage (lease and release) was correct and valid, as such no legal estate would remain in the mortgagor, and consequently no subsequent bargain and sale by him of the same premises could operate to raise a use to be executed by the statute; and a mere "release" or "grant" would effectually pass the equity of redemption to the mortgagee, and therefore there is no actual necessity to deal with it by a release under the recent act (4 Vict. c. 21). However, before the passing of that act, a lease and release were generally employed for the purpose of conveying equities of redemption, in order to obviate the consequences of any latent defects (should any be subsequently discovered) in the mortgage deed, and of course the same reasoning applies to a release alone, which, to be as effectual as the last mentioned instrument, must be expressed to be made in pursuance of the above act of parliament.

A. E. F.

SELECTIONS FROM CORRESPONDENCE.

EXAMINATION.—MEANS OF INSTRUCTION.

To the Editor of the Legal Observer.

Sir,

OBSERVING in your last number a communication from "O. O." on the subject of the "Articled Clerk grievance," I am induced to pen a few lines, bearing on the subject generally.

It is true that many young men have the misfortune to be articled to parties having but a limited share of business, especially in the equity and bankruptcy departments of a solicitor's practice. Such being the case, a young man has a proportionably greater difficulty to surmount in duly preparing himself for the examination. But I happen to know that the Examiners will make a *proper* allowance for gentlemen who have been thus situated.

Your correspondent enquires "how many questions are expected to be answered?" and "cannot a clerk thus circumstanced oblige the principal to allow him to spend part of his articles in town?"

With regard to the former question, I would answer that the *number* of answers required, depends on the *nature* of the answers given. I do not believe any fixed number to be required; in fact, it would be impolitic arbitrarily to assign any number. Our estimation of talent generally would be unsoundly based on such a principle.

I apprehend it to be scarcely possible that a young man, possessed of a due share of diligence, let his advantages whilst in the country be ever so limited, should be rejected at an examination as at present conducted. The total number of questions being only seventy-eight, three of these preliminary, and the candidate having the option of omitting two subjects of examination altogether, and the power of making a *limited* selection of the remaining ones. The truth of this remark is, I imagine, fully substantiated by the numbers that pass at each examination; whilst the rejected are *about one twentieth* only. It would not be fair to presume that the nineteen have been possessed of or actuated by even "*a due share of diligence*," and yet they have passed, and continue so to do, in the proportion of nineteen or twenty to one rejected. The number of successful candidates during the past year was 398; of unsuccessful 19, being still more in favour of what I have here advanced, than the proportions given above.

That articled clerks whilst serving their time should be *exclusively* employed in fair copying and engrossing, is certainly a crying evil; and a young man thus employed cannot be expected to have the necessary zest for prosecuting the theoretical part of his studies—he becomes, in fact, a mere machine.

Such a method of *educating* these young gentlemen, with whom a large premium has been paid, is reprehensible in the extreme, but the remedy is, and I think must continue

to be, in the attorneys and solicitors themselves;—it is, I rejoice to think, a practice rapidly on the decline.

I fully agree with your correspondent as to the necessity for allowing a *specified time* for reading and study; but imagine he has rather exceeded the necessary period.

A YOUNG SOLICITOR.

SUPERIOR COURTS.

Lord Chancellor.

PRACTICE.—ABATEMENT.

The marriage of a female plaintiff before decree causes a general abatement of the cause: Held, therefore, that where a female, one of several plaintiffs, married, and her co-plaintiffs did not shew that they might not have known of it, all the subsequent proceedings in the cause before revivor, are irregular and void.

This was a motion to take the Master's certificate, certifying insufficiency of answers, off the file, and to discharge all the proceedings in the cause consequent thereon, for irregularity. The irregularity complained of consisted in this:—The bill was filed by several plaintiffs against several defendants for an account. Mary Anne Crouch, widow, one of the plaintiffs, married John Carr, on the 3d of June, 1841. That fact was not known to any of her co-plaintiffs until the 27th of June, nor to the defendants till some time after that date, and proceedings were taken in the cause without reviving. On the 16th of June the solicitors of the parties were before the Master, who then certified that the answers of the defendants referred to him were insufficient. There were further answers, and were referred on the old exceptions taken to former answers, which had been also reported insufficient. Attachments issued against the defendants, and on the return of *non est inventus*, the usual proceedings were had, and the Serjeant at Arms, sent after the defendants, brought two of them, Malley and Shirley, to town, and locked them up in a house in Cursitor Street, to which the third defendant, George, was afterwards committed. They then submitted to put in further answers, and to pay 31l. for costs, under protest, and they were discharged. The plaintiffs filed a bill of revivor on the 29th of June, stating the marriage to have taken place on the 24th, and an order to revive was made in October. In consequence of the searches made by the defendants they discovered that the marriage was had before the 16th of June, the date of the Master's certificate, and they gave notice of two motions to discharge the certificate, and consequent proceedings, with costs.

Mr. Tennant in support of the motions, could not suppose it would be contended on the other side, that the marriage of a female plaintiff before decree, did not cause a general abatement of the suit, as that was a principle too well established. The only other ground

of opposition to the motion, could be waiver of the irregularity by the defendants. There was no waiver. It was sworn on behalf of the plaintiffs that their solicitor did not know of the marriage until the 27th of June. It was not material whether he had such knowledge or not in fact, as the plaintiffs were bound to know it, and any proceedings taken in the cause subsequently, and before revivor, were irregular.

Mr. Wakefield, (with whom was Mr. Whatley) for the plaintiffs, complained of the double notice of motion on the same point, which was merely to increase the costs; and after stating the date of all the proceedings, admitted that the marriage of a female plaintiff causes an abatement of the suit; but that here, all the parties (except Mrs. Crouch, or Carr, who was not a material party) being ignorant of the fact, went on with the proceedings, which being had *bona fide*, could not now be set aside. In *Crew v. Vernon*,^a a commission to examine witnesses in a case pending before the Chamberlain of Chester was awarded in Hilary Term, 22 James I, (1625) returnable the Easter Term following. The commissioners began to execute the commission on the 28th of March, the day after the demise of King James, and continued the examination of witnesses, until having notice of that event, they ceased, and returned all they had done. On motion in the Court of Common Pleas, to suppress the depositions as taken without warrant, the commission having determined by the king's death, it was resolved that the depositions should stand. There was a stronger case, *Burch v. Maypowder*.^b That was the case of an attachment issued in the life-time of King Charles II, and executed after his death, but before notice of his death; and it was held, that it was well executed, and that the proceedings were regular. A later case, *Thompson's case*,^c was still more in point, as there the examination of witnesses by commissioners, after the cause had in strictness abated by the death of the plaintiff, of which neither witnesses nor commissioners had notice, was held good, although one of the witnesses was living, and might be examined again. This was a motion for costs and nothing else; if the answers were to be referred again, the Master would report them insufficient. The co-plaintiffs of Mrs. Crouch filed the bill of revivor as soon as they heard of her marriage; none of the parties or their agents knew of the marriage when the Master gave his certificate. This motion was not against her, but her co-plaintiffs.

The Lord Chancellor thought the *onus* was on the plaintiffs to shew that they did not know of the marriage of one of them. That knowledge could be easily had. The counsel then entered into an arrangement.

Thomas v. Shirley, at Westminster, Jan. 31, 1842.

^a 1 Cro. Car. 97.

^b 1 Vernon, 400.

^c 3 P. Wms. 196.

Rolls.

VENDOR AND PURCHASER. — PAYMENT OF PURCHASE MONEY INTO COURT.

The Court will not, in a creditor's suit, make an order for payment of purchase money towards discharge of an incumbrance, without a previous reference to the Master, to ascertain the amount due on the incumbrance, although it may be admitted by all the parties that the amount of the purchase money is not nearly sufficient to discharge the incumbrance.

This was a creditor's suit; and a decree having been made for sale of a portion of the estates in the pleadings mentioned, under which certain sales had taken place; a purchaser of one of the lots was desirous of paying his purchase money and being let into possession; and as it would save considerable expence, if his purchase money were paid direct to a party who was admitted to have an equitable mortgage upon the property purchased by him to more than the amount of his purchase money.

Kinglake now moved for leave to pay such purchase money to the equitable mortgagee in part discharge of his incumbrance, and for his client on payment thereof to be let into possession.

Femberton, for the plaintiffs, consented, and stated that it was admitted by all parties, that the amount of the incumbrance considerably exceeded the purchase money; but

The Master of the Rolls said, that he could not make such an order, until the Master had certified as to the incumbrance, for which purpose there must be a reference, and the purchase money must therefore be paid into Court in the usual manner.

Hill v. Morris, January 27th, 1842.

CONSTRUCTION OF WILL, — JOINT-TENANCY. — LUNATIC. — COSTS.

A gift by will to A. and B. for their natural lives, does not necessarily create a joint-tenancy, provided an interest in the fund is given over after the death of either of them.

A trustee of a deceased lunatic is not entitled to retain in his hands monies belonging to the lunatic's estate for the purpose of satisfying costs claimed by him, relative to the commission under which the lunacy was established, but must apply to the Lord Chancellor for an order to have such costs taxed and allowed as a debt against the lunatic's estate.

The plaintiff in this case was the committee and personal representative of Charles Henry Tubbs, deceased, a lunatic, and the bill was filed for the purpose of obtaining from the defendant, who was a trustee of the late lunatic, an account of the residuary estate of Mrs. Tubbs, the lunatic's mother, and also an account of the rents and profits which had been received by the defendant from the real estate of the lunatic during his life. Two questions were raised by the pleadings, viz. first, as to the interest which,

according to the true construction of Mrs. Tubbs's will, the lunatic took in her estate; and, secondly, whether the defendant was entitled to retain out of the monies in his hands, the costs which had been incurred by him relative to the commission of lunacy under which his *cestui que trust* was found a lunatic. With regard to the first question, it appeared that Mrs. Tubbs by her will gave all the residue of her estate to trustees, upon trust to pay one-third part thereof to her daughter Philippina Sophia Tubbs for her use and benefit absolutely, and as to the remaining two-thirds, upon trust to invest the same in government securities, and pay the interest and dividends to her two sons, John Tubbs and Charles Henry Tubbs, during their natural lives, and from and after the decease of either of them, upon trust to pay one-fourth part thereof to her daughter Philippina Sophia Tubbs, for her own use and benefit, and to pay and apply the interest and dividends of one other fourth part of the said trust fund unto and to the use of the survivor of them the said John Tubbs and Charles Henry Tubbs, for his natural life, and after the decease of the survivor, to pay, transfer, assign, and set over the said trust fund, together with all interest that should be then due thereon, to and for the use and benefit of the said Philippina Sophia Tubbs. As to the second question, it did not appear that there was any dispute respecting the costs having been properly incurred, but no order had been obtained from the Lord Chancellor for the payment of them. Previous to the death of the lunatic, which took place in 1837, an order had been obtained by the plaintiff for a reference to the Master to inquire by whom the lunatic had been maintained, and also to ascertain the costs and expenses incurred by him in relation to the commission under which the deceased lunatic was found a lunatic, and the Master had found 413*l.* to be due to the plaintiff for maintenance, and 1100*l.* for costs. The Court had also directed a further inquiry as to whether there was any personal estate out of which the expenses could be provided for, and if not, then as to the real estate belonging to the late lunatic; but before such inquiry could be prosecuted the lunatic died. The plaintiff, therefore, now sought an account from the defendant, for the purpose of satisfying the amounts found due to him for maintenance and costs; but the defendant insisted that he was entitled to retain out of the monies in his hands belonging to the lunatic the expenses incurred by him relative to the commission.

Pemberton and Parry, for the plaintiff.—The lunatic, having survived his brother, became entitled to one moiety of the income arising from the two-thirds of his mother's residuary estate, which were settled upon him and his brother, and also to the income arising from one-fourth part of the remaining moiety, it being clearly the intention of the testatrix to give to each of the nephews one-third during their joint lives, and that on the death of either, the survivor should take an equal share of the interest of the son so dying, with the

daughter. If, however, any portion was not given over, they must be considered as joint tenants, and would take such portion by survivorship. 2 Powell on Devises, p. 753; Vin. Abr. tit. *Joint Tenants*, p. 476. As to the claim of the defendant for costs, that could not be sustained against the claims of the plaintiff, which had been expressly recognised by orders of the Court, for it was even questionable whether the defendant could make it a debt against the lunatic's estate, and certainly not until he had obtained an order of the Lord Chancellor for the taxation and payment of his costs, for no other Judge of the Court had any jurisdiction respecting them. They also cited *Baxter v. Lord Portsmouth*, 5 Barn. & Cress. 170; *Brown v. Joddrell*, 3 Car. & P. 30; *Clark v. Williams*, Q. B., not yet reported; and *Wentworth v. Tubb*, recently heard before V. C. Bruce.

Tinney and K. Parker, for the defendant Thompson, the executor of Philippina Sophia Tubbs, contended that only two constructions could be put upon the residuary clause, according to one of which, their testatrix became entitled, on the death of the lunatic's brother, to the three-fourths of the two-thirds settled upon them; and according to the other, Mrs. Tubbs died intestate as to two-fourths, on the death of John Tubb, in which latter event the daughter would become entitled to one-third as next of kin. *Cambridge v. Rous*, 8 Ves. 12.

Turner and Wilcock, for the defendant Wentworth, said that their client had no interest in the question respecting the construction of Mrs. Tubb's will, and in support of the claim of their client to a set-off, cited *Clark v. Cort*, 1 Cr. & Phil. 154.

The Master of the Rolls said, that although it was difficult to explain all the expressions in the will, yet the words used did not prevent him from stating, what clearly appeared to be the intention of the testatrix. In substance, the gift of the residue was intended to be ultimately for the benefit of one child, but so long as one of the sons should be living that he should be entitled to a share of the income. His Lordship then read the words of the bequest, and said, that they must mean to give an equal share of income in the two-thirds—to put each son on an equality, and after the death of the surviving son, to give the whole to the testatrix's daughter, Philippina Sophia. It is not perfectly clear that the words "for their lives" meant a joint tenancy in the sons, because from the context of the will it was evidently the intention of the testatrix to give to each an interest for life, and after the death of either, to take out a quarter, and make an express gift of it to the daughter, which shewed an intention not to give the benefit of survivorship. With regard to the other point, his lordship said, that the Court could not interfere, for in order to have his claim for costs allowed, the defendant must first obtain an order from the Lord Chancellor for permission to have his costs taxed, and that when taxed, they might be allowed as a debt against the lunatic's estate.

Wentworth v. Williams, Jan. 16th, 1842.

Vice Chancellor Wigram.

PRACTICE.—PROOF OF DEBT.—MASTER'S OFFICE.

Application by a creditor for leave to prove a debt before the Master, previously to the first apportionment of the fund, should be by petition; but

Semble, that under special circumstances the Court, in its discretion, will grant such an application upon motion.

Mr. *Spurrier* moved, in a creditor's suit, that one *Bolecot* might be at liberty, notwithstanding the report, which had been made and confirmed, to go in and prove his debt before the Master, to whom the cause stood referred, and that *Bolecot* might be entitled to the same benefit as though he had proved his debt previously. The first apportionment had not yet taken place. The decree for an account of debts to be taken was made in February, 1840. The case had been heard on further directions in August, 1840, prior to which all the advertisements had been issued. The affidavit on which the motion was founded, was made in the present term, and it was sworn that the advertisements had not been heard of.

Mr. *S. Sharpe*, *contra*, submitted that, strictly speaking, this should have been brought on by petition. It was only under very special circumstances a motion was allowed. The Court, however, exercised a discretion upon the subject. Suppose the debt were barred by statute, or could not be proved, were all the other parties to be delayed by this motion? Here it had been known by the applicant, who was the executor, and he had dealt with him in carrying on the testator's business.

Mr. *Spurrier*, in reply, said that if he had waited for a petition, the apportionment might have been made, and the application would have been too late.

His Honor enquired of the registrar, who stated that the application was more usually made on petition. A motion for such a purpose was not positively irregular, although very unusual and inconvenient. Under the circumstances, however, the order might be taken.

Mr. *Spurrier* said the form of the notice of motion was that *Bolecot* might have the benefit of the decree.

Wigram, V. C.—I do not think the order should run in that way. All that you want is to be at liberty to go in and prove a debt, notwithstanding the Master has made his report. It is not usual, upon motion, to make an order that you shall have the benefit of the previous proceedings; that follows.

Case cited, *Angel v. Haddon*, 1 Maddox's Reports, 529.

Prust v. Marley, M. T. 1841.

Queen's Bench.

[Before the four Judges.]

GAMING.—JUSTICES.

An information under the 1 & 2 Will. 4, c. 32, for an offence against that statute, must by

s. 41, be laid within three calendar months of the offence committed, and it cannot be heard and adjudicated upon, except by the justice before whom it was originally laid.

Quære, whether if a party should abscond, after committing an offence, and be absent for more than three calendar months, an information can be laid against him after his return.

Quære, also, whether under such circumstances, the party can at once be brought before the justice on a warrant, without a summons being previously issued.

This was an action of trespass, brought against the defendant, a magistrate of the county of Suffolk, and a commissioner of assessed taxes for that county, for having issued a warrant to imprison the plaintiff, under a conviction upon the Game Acts, 1 & 2 W. 4, c. 32. At the trial of the cause, at the Suffolk Summer Assizes of 1840, it appeared that in the month of October, 1838, the plaintiff was charged with having unlawfully shot a hare, and an information was laid against him for this offence, the day after he had committed it. The plaintiff absconded at the time, and did not return till the month of March, 1839. No proceedings were then taken against him, but in October 1839, he was taken before the defendant, who was not the justice before whom the old information had been laid. The defendant, however, did not proceed on that information alone, but caused another to be laid against the plaintiff, and pronounced a general conviction for the offence. The plaintiff had been brought before him, not upon a summons, but on a warrant, which was issued in the first instance, no summons having been previously issued, calling on him to appear and answer to the second information. The jury returned a verdict for the plaintiff, damages 10*l.*, this proceeding being adopted to save the expence of another trial; but the plaintiff was nonsuited on the objection that the form of the action ought to have been case and not trespass, and also on the ground that no action was maintainable under the circumstances stated. Leave was however given to him to move the court to set aside this nonsuit, and enter a verdict for the amount of the damages assessed, if the Court should be of opinion that the plaintiff was entitled to recover under the circumstances above stated. A rule having been obtained for that purpose,

Mr. *Biggs Andrews*, and Mr. *Byles*, shewed cause against the rule. The conviction was right, and the action is not maintainable. The defendant had the right to act on an information laid before another magistrate. The principle here is the same as in those cases where the law requires that the information shall be heard and determined by two justices, and where it has been declared by statute, that either one of those justices may in the first instance lawfully receive the information. The statute 52 Geo. 3, c. 93, schedule L., rule 13, justifies what has been done here.

▪ 3 Geo. 4, c. 23, s. 2.

The defendant is both a justice of the peace, and a commissioner of assessed taxes, and is therefore entitled to act under that statute, and having so acted, is further entitled to the protection given to justices by the 43 Geo. 3, c. 141, which declares that when justices have *bona fide* acted within their jurisdiction, the plaintiff shall not recover more than two pence damages, nor be entitled to recover at all, if he shall be proved guilty of the charge in respect of which they convicted him.

Mr. Kelly and Mr. O'Malley, in support of the rule.—The defendant here had no jurisdiction. The second information gave him none, for the act under which it was laid, requires that the prosecution shall be commenced within three calendar months after the offence committed, which was not the case here. The first information also gave the defendant no jurisdiction, for there is no clause in the 1 & 2 Will. 4, c. 32, nor in any of the other acts, empowering one justice to adjudicate on an information laid before another. The proceedings here were likewise irregular, because if the defendant proceeded on the second information, he had no authority to act on a warrant without previously issuing a summons. The statutes referred to as affording him protection, are consequently inapplicable, and the rule must be absolute.

Lord Denman, delivered judgment. The conviction here took place in October 1839, the offence itself being committed in October 1838. In this case, therefore, the conviction appears to have taken place more than twelve months after the offence committed, and it is therefore said to be bad, as the game act, 1 & 2 Will. 4, c. 32, restricts informations to a period of within three months after the offence committed. Another objection is, that the conviction was made by a justice, before whom the original information had not been exhibited, so that there was a want of jurisdiction. The facts are these.—The plaintiff absconded soon after the committing of the alleged offence, and was absent till the month of March 1839. It was therefore impossible to bring him before the justice within the three months, but after his return he was allowed to remain for some months in the country, without being called on to answer to the information. At length, in October 1839, he was brought before the defendant, not upon a summons to answer a new information, but on the warrant issued, and a second information being laid against him, he was convicted and imprisoned. Assuming that there was no irregularity in issuing a warrant without first issuing a summons, and assuming that there is nothing in the objection of the delay of three calendar months, the question is whether the defendant had jurisdiction in the case—whether in fact, where there is a regular complaint, one justice may, under this statute, decide on an information which has been laid before another. The 52 Geo. 3, c. 93, rule 13, is that which gives the jurisdiction to a justice, being also a commissioner of assessed taxes; but that rule does not say, nor does any one of the other acts say, that

the case may be heard before any other justice or commissioner, besides that one to whom the information was exhibited. We are of opinion that that rule does not give authority to any justice to hear the matter, except that one to whom the complaint was originally made. The 3 G. 4, c. 23, s. 32, does not make any difference in this matter, for that does not direct one justice under such circumstances to hear an information exhibited before another, but it merely recognizes an existing practice, and declares that when the law requires a matter to be heard and decided before two or more justices, one of such justices may take such information in the first instance, and enforce it afterwards. We are therefore of opinion on this point, that the defendant had no jurisdiction, that consequently the 43 G. 3, c. 141, does not apply to protect him, and that the rule must be absolute for entering a verdict for the sum of 10l.

Rule absolute accordingly.—*Jones v. Gurdon*, H. T. 1842.

Queen's Bench Practice Court.

JUDGMENT AGAINST THE CASUAL EJECTOR. —BANKRUPT.—ASSIGNEE.

It is sufficient service, where the tenant has become bankrupt, to serve the declaration on one of the assignees, who is sworn to be the tenant in possession.

W. A. Hill, moved for leave to sign judgment against the casualejector. The affidavit on which he applied stated that the tenant had become bankrupt, and that one of his assignees was in possession of the premises. The declaration had been served on him. This, it was submitted, was a sufficient service to obtain judgment.

Williams, J., thought the service sufficient.

Rule granted.—*Doe d. Ask v. Roe*, H. T., 1842. Q. B. P. C.

WARRANT OF ATTORNEY. — DEFEASANCE. — CONSIDERATION.

A warrant of attorney will not be set aside, on the ground that the true consideration is not stated in the defeasance, a consideration appearing in the defeasance.

Crompton applied for a rule to shew cause why a warrant of attorney should not be set aside, on the ground that the consideration stated in the defeasance was not the true one. There was, however, a consideration stated. The question was whether this invalidated the instrument. There was not any authority on the point to the effect that the instrument was therefore invalid.

Williams, J., was of opinion that there was no ground for the application, for the reason suggested. The Court could not go into the question on affidavit, as to whether the debt was truly stated.

Rule refused.—*Anonymous*, H. T., 1842. Q. B. P. C.

ATTORNEY AND CLIENT.—TRUSTEE.—CESTUI QUE TRUST.

The Court will not compel an attorney to deliver up deeds to one of several trustees, where it appears that he has been employed by the cestui que trust, and one of the trustees objects to the application.

In this case, it appeared that certain property having been left in trust, for the benefit of certain cestui que trusts, an attorney had been employed by the latter for the protection of their interests. In the course of their employment, deeds which related to the trust property were deposited with him by the cestui que trusts. Sometime afterwards, some of the trustees were desirous of obtaining possession of these deeds, and accordingly

Fitzherbert obtained a rule nisi, calling upon him to deliver them up to them.

V. Williams shewed cause against this rule, and produced an affidavit, from which it appeared that one of the trustees objected to the application. He contended, that as the employment of the attorney had been by the cestui que trusts, and not the trustees; this Court could not compel him to give up deeds received from them, to the trustees. Even if the Court could do so, it would not exercise such a power where the application was not made by all of them, but was objected to by one.

Fitzherbert supported the rule, and contended that it did not clearly appear on the affidavits that the attorney had been solely employed by the cestui que trusts, but that the trustees had jointly employed him with them; nor was the dissent of the single trustee, adequately shewn.

Cur. adv. vult.

Williams, J., thought both the fact of the sole employment by the cestui que trusts, and the dissent of the single trustee, were sufficiently shewn; therefore he should not interfere to compel the attorney to deliver up the deeds.

Rule discharged.—*In the matter of Gregory*. H. T. 1842. Q. B. P. C.

ATTORNEY AND CLIENT.—ATTACHMENT.—RULE ABSOLUTE.

Where a rule requiring a party to pay money has been made absolute, a rule for an attachment absolute in the first instance will be granted.

Pashley moved for an attachment against an attorney for non-payment of a certain sum of money, which he had been ordered by rule of Court to pay. An application had been made against the party requiring him to pay over the sum in question, and a rule requiring him so to do, was made absolute. The question was, whether the rule for the attachment should be absolute or nisi in the first instance. Against the previous rule, the attorney had not shewed cause, although enlarged at his instance to shew cause at chambers, and the rule was made absolute. He could, therefore, have no cause to shew against the rule for an attachment. It was submitted, that the rule for the attachment ought to be absolute in the

first instance, on the authority of the case of *King v. Price*.^a The marginal note of that case was, "on motion for an attachment for not paying money under a previous order of the Court, on a party who has been called on by the former rule to shew cause why that money and the costs of such application should not be paid, and against which order no cause has been shewn: the rule for the attachment will be granted absolutely in the first instance."

Patteson, J.—This is as strong a case as one can be. A rule nisi requiring the attorney to shew cause why he should not pay over the sum in question, was enlarged to shew cause at chambers. No cause was shewn, and the rule was made absolute to pay the money over. I think, on the authority of *King v. Price*, the rule may be absolute for an attachment in the first instance.

Rule absolute.—*Ex parte Burgin*, M. T. 1841. Q. B. P. C.

Common Pleas.

UNLIQUIDATED DAMAGES.—WRIT OF TRIAL ACT.

The plaintiff in his declaration alleged a hiring by the defendant of a timber carriage, with certain chains attached, for a reasonable time, and a promise to return the same, and stated as a breach his neglect to return the chains, to the damage of the plaintiff of 5l.: Held, to be an action for unliquidated damages, and not triable before the undersheriff, within the operation of the 3 & 4 W. 4, c. 42, s. 17.

The declaration stated, that in consideration that the plaintiff at the request of the defendant, would let to hire to the defendant a certain timber carriage and chains, to be had and used by the defendant for a certain time, for a reasonable hiring and reward, the defendant undertook to return the said carriage and chains to the plaintiff at the expiration of the said period; that the plaintiff confiding, &c. did &c.; breach, that at the expiration of the hiring, though the plaintiff hath received back the said carriage from the defendant, yet the defendant did not, but wholly neglected and refused to return the said chains to the plaintiff, to the damage of the plaintiff of 5l. The declaration contained other counts in *indebitatus assumpsit*, and issue being joined, a writ of trial was granted, and the cause was tried before the undersheriff of the county of Warwick, when a verdict was returned for the plaintiff, with 18l. damages. A rule nisi having been obtained in Michaelmas Term, 1841, for a new trial, on the ground that the declaration disclosed a claim for unliquidated damages, and that the action was not, therefore, triable before the undersheriff, under the 3 & 4 W. 4, c. 42, s. 17.—

Mr. Serjt. Channell now shewed cause. He contended that the demand in the declaration being for a sum certain, the objection was got rid of, and cited, in support of this argument, *Price v. Morgan*, 2 M. & W. 53; *Allen v. Pink*,

^a 1 Price, 341.

4 M. & W. 140; 6 Dowl. P. C. 668; and *Walker v. Needham*, 23 L. O. 203.

Mr. Serjt. *Bompas*, *contra*, urged that the damages claimed were not necessarily confined to the value of the chain, and referred to *Jacquot v. Bourra*, 5 M. & W. 155; 7 Dowl. P. C. 331.

Tindal, C. J.—The act of parliament authorizes the trial of actions before the under sheriff, where “the debt or demand” does not exceed 20*l*. I do not think this case comes within that description, for the demand here, is, properly speaking, for unliquidated damages. Rule absolute.—*Collis v. Groome*, H. T. 1842. C. P.

JUDGMENT AS IN CASE OF A NONSUIT.—EXCUSE.—PEREMPTORY UNDERTAKING.

In answer to a rule for judgment as in case of a nonsuit, in an action of libel, the plaintiffs produced affidavits, alleging that it would be unsafe for them to proceed to trial immediately, in consequence of an alleged prejudice excited in the public mind, in reference to certain disclosures implicating their character, made by a bankrupt in his examinations. The Court ordered a peremptory undertaking to try to be given for the sittings after the existing term.

Mr. Serjeant *Storks* shewed cause against a rule which had been obtained in this suit, for judgment as in case of a nonsuit. The affidavits which he produced, stated as an excuse for not proceeding to trial, that the plaintiffs deemed it unadvisable to do so, owing to a prejudice which was supposed to exist against the plaintiffs in the public mind, in consequence of some disclosures which had been made in the course of the examination of one William Hitchcock, a bankrupt, before the Commissioners of Bankrupts, which had attracted a large degree of public attention. The learned Serjeant was prepared to give a peremptory undertaking to try at the sittings after Easter Term; but this being an action of libel brought in respect of a publication arising out of the disclosures in question, it was urged that it would not be safe for the plaintiffs to go trial until then.

Mr. Serjeant *Channell*, in support of the rule, contended that if the Court admitted the plaintiffs to discharge this rule on the terms proposed, the trial would, in effect, be postponed until the sittings after Trinity Term, it being a special jury cause, and the sittings after E. T. being too short to admit of the possibility of its being then tried. He was willing to accept a peremptory undertaking to try at the sittings after the present term.

Per Curiam.—In effect there is no cause shewn against this rule, for if we permitted the excuse to prevail, we should be making ourselves parties to a libel against the whole city of London. The plaintiffs must give a peremptory undertaking to try at the sittings after this term.

Rule accordingly.—*Cook and others v. Brooks*, H. T. 1842. C. P.

CIRCUITS OF THE JUDGES.

NORFOLK.

Lord Chief Justice *Thurkel* and Mr. Serjt. *Atcherley*.

Aylesbury, Tuesday, 8th March.
Bedford, Saturday, 12th March.
Huntingdon, Thursday, 17th March.
Cambridge, Saturday, 19th March.
Bury St. Edmunds, Saturday, 26th March.
Norwich and City, Saturday, 2d April.

MIDLAND.

Lord *Abinger* and Mr. Justice *Williams*.
Northampton, Monday, 28th Feb.
Oakham, Friday, 4th March.
Lincoln and City, Saturday, 5th March.
Nottingham and Town, Thursday, 10th March.
Derby, Saturday, 12th March.
Leicester and Borough, Thursday, 17th March.
Coventry and Warwick, Monday, 21st March.

NORTHERN.

Mr. Baron *Rolfe* and Mr. Justice *Wightman*.
Durham, Monday, 21st Feb.
Newcastle and Town, Friday, 25th Feb.
Mr. Baron *Parke* and Mr. Baron *Rolfe*.
York and City, Wednesday, 2d March.
Liverpool, Thursday, 24th March.
Mr. Justice *Wightman*.
Carlisle, Friday, 4th March.
Appleby, Wednesday, 9th March.
Lancaster, Saturday, 12th March.

HOME.

Mr. Baron *Alderson* and Mr. Baron *Gurney*.
Hertford, Tuesday, 1st March.
Chelmsford, Monday, 7th March.
Maidstone, Monday, 14th March.
Lewis, Saturday, 19th March.
Kingston, Monday, 28th March.

OXFORD.

Mr. Justice *Patteson* and Mr. Justice *Cresswell*.
Reading, Wednesday, 23d Feb.
Oxford, Saturday, 26th Feb.
Worcester and City, Thursday, 3d March.
Stafford, Wednesday, 9th March.
Shrewsbury, Friday, 18th March.
Hereford, Wednesday, 23d March.
Monmouth, Saturday, 26th March.
Gloucester and City, Wednesday, 30th March.

WESTERN.

Mr. Justice *Coleridge* and Mr. Justice *Erskine*.
Winchester, Thursday, 24th Feb.
Salisbury, Thursday, 3d March.
Dorchester, Wednesday, 9th March.
Exeter and City, Monday, 14th March.
Bodmin, Thursday, 24th March.
Taunton, Monday, 28th March.

NORTH WALES.

Mr. Justice *Coltman*.
Welchpool, Tuesday, 8th March.
Bala, Saturday, 12th March.
Carnarvon, Wednesday, 16th March.

Beaumaris, Saturday, 19th March.
Ruthin, Wednesday, 23d March.
Mold, Tuesday, 29th March.
Chester, Saturday, 2d April.

SOUTH WALES.

Mr. Justice Maule.

Swansea, Wednesday, 23d Feb.
Haverfordwest and Town, Saturday, 5th March.
Cardigan, Thursday, 10th March.
Carmarthen, Tuesday, 15th March.
Brecon, Tuesday, 22d March.
Presteign, Tuesday, 29th March.
Chester, Saturday, 2d April.

PARLIAMENTARY INTELLIGENCE RELATING TO THE LAW.

House of Lords.

The following Bills have been brought in, and stand for second reading.

For regulating Buildings in Large Towns. Lord Normanby.
 For the improvement of certain Boroughs. Lord Normanby.
 For enabling Ecclesiastical Corporations to grant Leases. The Bishop of London.
 For enabling Incumbents of Benefices to grant Leases. The Bishop of London.

House of Commons.

PRIVATE BILLS.

The following are the Resolutions of the House on this subject:—

That this House will not receive any Petition for Private Bills after Friday, the 25th February.

That no Private Bill be read the first time, after Wednesday the 23rd March.

That this House will not receive any report of such Private Bill after Friday the 27th May.

That a copy of every bill annexed to a petition, be deposited in the Private Bill Office, the day after the presentation of the petition. And that such bills be open to the inspection of all parties applying for the same.

That copies of every bill annexed to a petition already presented to the House, be deposited in the Private Bill Office, on or before the 14th February.

The following Bills have been brought in:—

For Registering Copyrights and Assignments, and better securing the property therein.

Mr. Godson.

To allow Writs of Error on Mandamus. The Attorney General.

To alter the Law as to Double Costs, and other matters. The Attorney General.

THE EDITOR'S LETTER BOX.

We have received a letter from "an Articled Clerk," stating that he has had communication with several of his fellow-articled clerks on the subject of the establishment of a society or club, for the "*sole discussion of legal subjects*," after the plan of the late Sir Samuel Romilly; and he wishes to give the subject publicity, and to appeal, through these pages, to all articled clerks, who have any wish to forward themselves in their profession, and by means of discussion to inculcate the inestimable advantage of perseverance and industrious research.

We think that the Law List cannot be given in evidence to prove that an attorney has duly taken out and entered his certificate for the same years as his name appears therein, when the certificate has been lost or mislaid.

"Jus" states, in answer to a correspondent, at p. 224, that the solicitor of a mortgagee is not entitled to charge the mortgagor for a schedule of the deeds, on paying off the mortgage, as the schedule is neither *usual* or *necessary*.

A correspondent reminds W. M. that there is a society, called "The Law Students' Society," which holds its meetings at the Law Institution, and as to the meeting proposed by W. M., for the purpose of establishing rewards to be distributed at the examinations to gentlemen passing for the purpose of being admitted attorneys should take place, our correspondent suggests that the parties should put themselves in communication with such society.

The service of F. J. H. as an articled clerk, during the year his master was committed to prison for a misdemeanor, will not, we think, be deemed good service, although he continues in his master's employ during the twelve months. If the master refuse to assign him over to another attorney, the Court will no doubt exert its jurisdiction upon application by the clerk, and order the master to assign him over.

"One, &c." suggests that barristers' clerks, on receiving fees for their employers, should give a receipt or acknowledgment to the attorney or his clerk, in order to prevent the *mistakes* which occur.

In the List of Candidates who passed the Hilary Term Examination, the name appears of Charles Samuel Orlebar, instead of Charles Daniel Orlebar.

G. H. H. is informed, that though an articled clerk may serve one year of his clerkship with a special pleader or conveyancer, and one with his master's agent, yet, in case of the master's death or retiring from practice at the end of the first three years of the clerk's service, it will be necessary for the clerk to be assigned, that is, the service must be continued "under contract" with an attorney, though the attorney may consent that one year may be served with a special pleader and another with his agent.

Part I. of the Analytical Digest of Reported Cases for 1842, is now ready, price 2s. 6d.

The Legal Observer.

SATURDAY, FEBRUARY 19, 1842.

— “Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

REFORM IN CHANCERY.

No. II.

IN our last article we alluded to the heads into which this subject naturally divided itself, and we mentioned that the second of these—the delays attendant on waiting for the hearing of causes,—was fast disappearing. We propose, on the present occasion, to say a few words on one branch of the first head,—the proceedings *preparatory to the hearing* of causes.

By the recent orders of the Court (26th August, 1841), some valuable changes have been introduced into the practice with respect to the first steps of a cause. If a party is served with a *subpoena*, and does not appear, the common law practice is now introduced of allowing an appearance in Equity, analogous to the Common Law *appearance sec. stat.* This practice, however, is not completely introduced. The cases of parties under disabilities, and privileged persons, peers, members of parliament, lunatics, and infants, are left where they were, and the attachment for want of appearance itself is not taken away. But there would seem no reason why the simple practice of an appearance *sec. stat.* should not be extended to every case, and should not be the only penalty to which a defendant is in the first instance subjected, if he does not appear.

As to the practice in *default of answer*, it is still left in a state much more complicated than the practice in default of appearance is now in. If a defendant is taken on the attachment, and gives 40*l.* bail, the plaintiff may still have to pursue the old course, and run through all the steps of the Equity sliding scale—of messengers, sergeant-at-arms, and sequestration, to *pro*

confesso—at an expense varying from 20*l.* or 30*l.* to 40*l.* or 50*l.*

In the very common case, too, of an attachment for want of answer, returned *non est inventus*, though the late orders on the affidavit of due diligence allow the plaintiff to jump at once to a sequestration, and then to a *pro confesso*; even they leave the writ of sequestration, (which is a mere form and expence, and a cause of delay), and they also leave the form of the affidavit of due diligence, where it was before. Now this affidavit is granted under Sir E. Sugden's act, 11 G. 4 and 1 W. 4, c. 36, (an act which certainly wants thorough revision). Rule 1 of this act requires an affidavit “of the solicitor of the plaintiff, or his town agent,” (not of the clerks who do the work) “that due diligence was used to ascertain the place where such defendant was at the time of issuing such writ, and that the person suing forth the same,” (*i. e.* the solicitor) “verily believed at the time of suing forth the same that such defendant was in the county into which such writ issued.” But in nine cases out of ten, you have no belief where the defendant is. You *can* have none. He is *non est inventus*—gone—but you can't shew it. You can swear where his residence is, but not where, at the instant, he is personally. This is not within the act. See *Davis v. Hammond*, 5 Sim. 9, in which it was so held, and that the affidavit must follow the exact words of the act. It was so held in 1831, but yet, in 1841, the new rules (rule ix) repeat this in *totidem verbis*, leaving the old difficulty untouched.

The practice again as to processes to compel the performance of decrees and orders, is not at all in the state it should be. In the first place, why, if a defendant at law can with propriety be bound to take notice of the judgment, and to pay money when judg-

ment is recovered against him, should there be any necessity for delay in enforcing a decree against him in Chancery? But by the orders of 10th May, 1839, a plaintiff must wait a month after his order is entered (the day of entering an order is not, by the way, a day noticed in Chancery practice, only the date of the order itself) before he sues out the *fi. fa.* given by that act. Or, if instead of having a *fi. fa.* he chooses to proceed to an attachment, why in equity must the defendant be personally served with an order or decree made against him before his counsel's face, when, at law, no such necessity exists, and where the law practice is obviously a fair one, and one out of which no mischief has ever arisen? If a decree and a judgment were both pronounced against a defendant on the same day, why is the common law plaintiff to be entitled to his remedy one month before the chancery plaintiff? and why is the chancery plaintiff to have the expence of personally serving the defendant with what is analogous to the common law judgment roll?

Again, as to the writs of execution of orders, of which, perhaps, ten a-year at the outside are abolished; why are writs of injunction, of which hundreds must be wanted, not abolished too? They are writs generically the same.

Altogether, it is clear that the practice as to process wants careful investigation. And it is also very advisable that this should be done *at once*, so as to bring a very simplified practice into play, when the Six Clerks' Office shall come to be abolished. This we think of great importance.

The practice on contempt is almost the only branch of practice left exclusively with the clerks in court. When their duties are transferred to solicitors, this branch is almost the only one which it will cause the solicitors much difficulty to learn; and if simplified so as to become something very like the common law practice, it will not only be a great gain to the suitor, but no small gain to the solicitor too, and no small impediment removed from out of the way of abolishing the Six Clerks' Office. As to the solicitor, the fees allowed on issuing writs, would not at all compensate him for the trouble which the present very obscure and involved practice would bring on him, whenever he had a writ to issue. We are glad to know that the whole subject here treated of is under active and careful practical consideration.

THE LAW OF JOINT STOCK COMPANIES.

MAKING CALLS.

We recently adverted to the cases as to making calls; we now add the following, which confirms the conclusions to which we then came:—

The Sheffield and Manchester Railway Act (7 W. 4, c. 21.) by s. 115, empowered the directors, from time to time to make such calls from the proprietors, on their respective shares, as they from time to time should find necessary, so that no call should exceed 10*l.* on each share, and that there should be an interval of three calendar months between each successive call, and twenty-one day's notice should be given of every such call, by advertisement in the local newspapers; and the proprietors were thereby required to pay the calls on their shares to such person, at such time, at such place, and in such manner, as the directors should from time to time direct or appoint. The directors made a resolution for a call, specifying therein the amount of the call, and the day of payment, but not the place where, or the person to whom the payment was to be made; but a notice of that call, subsequently inserted in the local newspapers, according to the directions of the act, specified all those matters. In an action for the amount of such call, against a party who was a proprietor at the date of the resolution, of the notice, and of the day appointed for payment, it not appearing also, that there was any change in the directory during that interval: Held, that the call was properly made. By another resolution, made on the 13th of March, the directors resolved that a call of 5*l.* should be made on the 30th of March instant, to be paid on the 1st of May: Held, that the call was not invalid because the resolution was prospective. Some of the directors by whom the resolution for the calls were made, were members of a banking company, who were the bankers and treasurers of the railway company, and as such, received and gave receipts for calls, and paid cheques drawn by the directors, &c. A clause of the act of parliament (s. 150) enacted, that no person concerned or interested in any contract with the company should be capable of being chosen a director, and that if any director should directly or indirectly be concerned in any contract with the company, he should thereupon be immediately, and was thereby discharged from the direction: Held, that this clause applied only to contracts made with the company in prosecution of its enterprize, and did not disqualify the directors above mentioned. Another clause (s. 159) directed that the orders and proceedings of the directors should be entered in a book, and signed by the chairman of the meeting, and enacted, that when so entered and signed,

they should be deemed originals, and be read in evidence without proof of the persons making or entering them being directors, or of the signature of the chairman: Held, that a book of proceedings purporting to be signed "*W. S.*, deputy chairman," was evidence *per se*, without proof that *W. S.* was in fact deputy chairman, or as such presided at the meeting. A transfer of railway shares from an original subscriber to the undertaking, made before the formation of a register of proprietors pursuant to the act, but after the passing of the act of parliament, is good, although the transferee be never registered as a proprietor. Where the act required such transfer to be by deed, and a transfer of shares was executed by the seller, with a blank for the purchaser's name, and stating the consideration truly, but the purchaser afterwards signed and transmitted to the company, in pursuance of the act, a proxy paper describing him as the proprietor of the shares: Held, in an action by the company against him for calls on such shares, that he was precluded from disputing the validity of the transfer. *The Sheffield and Manchester Railway Company v. Woodcock*, 7 M. & W. 574.

THE PROGRESS OF LAW REFORM.

So far the session has produced but little in the way of law reform; but we understand that many measures are in agitation, and will be *speedily produced*. The country commissioners of bankruptcy will, in all probability, be replaced by a much more limited number of Judges, and the administration of justice in bankruptcy in the provinces, be put on another footing. The present system of administering lunacy, is also under consideration, with the intention of making some alteration in it. We have long considered that reform was here required. The mode of payment to the commissioners by the day, has been exploded in almost every other instance, and we see no reason why a permanent tribunal should not be appointed, which should deal with these matters, as well in town as in the country. The registration of voters is certainly another subject which will be brought before Parliament. We have not heard the exact plan, but we believe that the doom of the present Revising Barristers, as a body, is sealed: that a fixed, and not a floating number, will be appointed, who shall attend exclusively to this business. We have long urged the propriety of such an alteration, and we shall be glad to see it made. The courts of revision must of course continue. It has been further reported that a modi-

fied scheme of local courts, limited probably to the recovery of small debts, will be introduced in the course of the session; and Sir James Graham, on Wednesday last, stated that such was the fact.

LETTERS

FROM MR. AMBROSE HARCOURT, STUDENT AT LAW, TO MR. THOMAS PRINGLE, OF TRINITY HALL, CAMBRIDGE.

LETTER V.

Dear Pringle,

I now go on with their Honors the Vice Chancellors, and I may tell you that since their appointment one of the most crying evils attending the administration of justice in the Court of Chancery is fast disappearing—the delay in the hearing of causes. This delay, till very lately, amounted to two or three years after the cause was set down, and operated in two ways. It was a great grievance, when the parties actually intended and wished that their causes should be heard; but it was a still greater where they did not; I mean where, availing themselves of the delay which it was known would take place in this stage of a cause, parties merely had their causes put down with the intention of taking advantage of the chapter of accidents, and giving way when the hearing was to come on. The great arrear was therefore a crying injustice, as rights might thus be defeated for a long period, if not for ever, and an estate in possession was converted into an estate in reversion. This was the state of the Chancery cause list, I am informed, when Michaelmas Term last commenced; and when it was distributed among the three Judges, many of the causes turned out to be "rotten," that is, they dropt off and disappeared, never having been intended to be heard at all; and what with this circumstance, and the vigorous assault upon it by the Judges, it is now of a very moderate extent. You must not suppose, however, that delay in Chancery will cease to exist on this account. If the delay in this stage of a cause cease, it will soon occur elsewhere; there will next be a stoppage in the Master's office; a complete block up of business; or what is still more likely, an arrear of appeals before the Lord Chancellor, if this has not taken place already. We shall see, therefore, soon, if the mere appointment of two Judges was a sufficient remedy for the evil, or whether a much more extensive remedy in the other parts of the procedure must not be applied.

In the mean time I am informed that all that the Judges can do has been done.

Mr. Knight Bruce, (for as far as I know he has not yet been, and I presume will not be knighted, although sworn of the Privy Council) has for many years led the Chancery bar. Since the retirement of Sir Edward Sugden he was for many years the advocate for choice of the suitor, and happy indeed was the suitor who was first in the race to retain him; most happy, certainly, if the cause was tried in a particular Court. I need hardly say that the leader of the Chancery bar (for with one exception, that of Mr. Pemberton, who rarely crossed his path, he was the leader) must be a distinguished man. He had a marvellous quickness, extensive knowledge, a thorough acquaintance with the practice of the Court, and a ready and animated eloquence. He was to be pardoned, therefore, if he was somewhat conceited and overbearing, and a little too fond of hearing himself talk. Still, with all these acquirements, it was doubted, even by some of his friends, whether this very successful advocate would subside into a good judge. There have been no ordinary disappointments in other cases on this score, and people, in Mr. Bruce's case, were prepared to expect it. Many were the very wise heads that were shaken; and profound indeed were the conjectures at the appointment. It has so happened, however, that, so far, I understand Mr. Knight Bruce has turned out a very good Judge. His great quickness, his knowledge as well of practice as principle; his thorough familiarity with all the details of a cause, have all come to his aid; and hitherto there has been found no want of the judgment which is necessary to keep all these faculties in order, and complete the satisfactory disposal of a cause. Certainly I am assured that, for getting through the arrear, no Judge could be better. Cause after cause is drawn in and disposed of by him, not always, indeed, as I am told, on full preparation of all parties concerned, but without dissatisfaction. He has, in many cases, known more about a cause than any one else, but I do not know that this is to be objected to. His faults as a Judge are, that he is too impatient; that seeing a point very clearly himself, he is fidgetty if the advocate who is addressing him does not see it also immediately; and that he is rather fond of hurrying the counsel who addresses him; of cutting short the usual rigmarole of a cause, and getting to what are called "the points." Moreover it was difficult for the successful advocate to remember all at once that the

first duty of a judge is to listen. It may reasonably be expected, however, that these faults will subside, and that Mr. Knight Bruce will lose none of his reputation by his promotion to the Bench.

I now come to Vice Chancellor Wigram, the second Vice Chancellor, and this has been very generally admitted to be a sound and wise appointment. He possesses great industry, much acuteness, and certainly no deficiency in professional information; and here also the Bench has the advantage of that perfect familiarity with its ordinary business, which can only be acquired by extensive practice at the bar. Mr. Wigram is, however, a slower man by nature and habit than Mr. Knight Bruce. I will not yet say he is a surer, until further experience enables me to judge. But he has hitherto obtained, and is likely to retain, the confidence of the suitor. Up to a certain point he can always go without difficulty, and has full command of all his faculties to this extent; but he does not dazzle the Court by any great display. Thus I send you my crude notions of these learned Judges, and shall probably write to you again soon.

Your's truly,

AMBROSE HARCOURT.

NOTES ON EQUITY.

COPYRIGHT IN FOREIGNERS.

IF an alien resident abroad composes a work there, but publishes it first in this country, he is entitled, it would seem, to the protection of the laws of this country relating to copyright.

Sir *L. Shadwell*, V. C., said "In his opinion protection was given by the law of copyright to a work first published in this country, whether it was written abroad by a foreigner or not, that if an alien friend wrote a book, whether abroad or in this country, and gave the British public the advantage of his industry and knowledge, by first publishing the work here, he was entitled to the protection of the laws relating to copyright in this country; but as the question which had been discussed was a legal one, he should direct the plaintiff to bring an action within three weeks, for the purpose of trying his right, and should continue the injunction in the meantime." An action was accordingly brought, but the defendant consented to a verdict being taken against him. *Bentley v. Foster*, 10 Sim. 329. By stat. 1 & 2 Vict. c. 59, the benefit of international copyright is, in certain cases, secured, as it empowers her Majesty, by order in council, to direct that authors of books, first published in foreign countries, and their assigns,

shall have a copyright in such books within her Majesty's dominions. See all the statutes as to copyright concisely stated, 2 Stewart's Blackstone, 439—440. 2d edit.

PROCEEDINGS IN TWO COURTS.

The general rule of a Court of Equity is, that parties must not proceed in any other Court for the same purpose for which they are proceeding in the Court of Equity; and it makes no difference whether the other proceedings are taken in this, or in any other country. See *Mocher v. Reid*, 1 Ba. & Be. 318; *Wilson v. Wetherell*, 2 Mer. 406; *Booth v. Leyerster*, 1 Keen, 579, and 3 Myl. & C. 421; and *Edgecumbe v. Carpenter*, 1 Beav. 171; and if a party conceives there are any circumstances in his case which constitute an exception to the rule, his proper course is not to take proceedings in another Court of his own authority, but to apply to this Court for permission to take such proceedings. In a late case, these rules were fully reviewed. Plaintiffs who had obtained in the Court of Chancery a decree for an account against three defendants, two of whom resided in Scotland, and all of whom had real property there, brought actions in Scotland against the same defendant for the same demand, and they obtained leave from the Court of Chancery to prosecute the Scotch actions, so far as should be necessary for the purpose of obtaining such security, as it is in the power of the Scotch Court to give for the amount, which upon taking the accounts directed by the decree, should ultimately be found due to the plaintiffs. "I find," said Lord Cottenham, C., "that some at least of the defendants are out of the jurisdiction, that they are living in Scotland, and have landed property there, which by the course of the Court of Session may be rendered available as a security for what is due from the defendants. There is no mode in this country by which that security can be obtained, and the result might be, that after the plaintiff had ascertained the amount of their demand, they might be unable to enforce payment of it, because I have neither the defendants here, nor have I any property of theirs which could be made available. The result would be, that after the plaintiffs had ascertained the amount due to them, and had had their demand established on further directions, they would then have to proceed to Scotland, not for the purpose of establishing their demand, but for the purpose of obtaining security for the satisfaction of the demand which had been established; but at that time they might not find in Scotland either the defendants, or any property of theirs. Under these circumstances, the question is whether this Court should carry the rule so far as to preclude the plaintiff from adopting such proceedings as shall ensure them the means of satisfying what will be found to be the amount due to them; and it does appear to me, that such an extension of the rule would, under colour of doing equity to the defendants, do great injustice to the plaintiffs.

* * * I do not at all prescribe to the Court of Session what course they should pursue. They perhaps may inhibit the plaintiffs from proceeding here. I consider that the plaintiffs are entitled to such security as the practice of the Court of Session gives for what shall ultimately be found due, whether it be ascertained in the Court of Session or here." The Lord Chancellor, therefore, allowed the already existing proceedings in Scotland to go on, but so far only as might be necessary to obtain security for what should be found due from the defendants to the plaintiffs. *Wedderburn v. Wedderburn*, 4 Myl. & C. 585.

NEW BILLS IN PARLIAMENT.

COPYRIGHT REGISTRATION.

THIS bill, which has been introduced by Mr. Godson, is intitled, "A Bill for the Registering of Copyrights and Assignments thereof, and for the better securing the property therein." It recites that it is necessary to give the authors of printed publications a greater security in the property of their copyrights of and in the same than they at present possess, and to give ready and easy means to the public to ascertain at any time to whom the property in such copyrights may belong, the assignments that may have been made of them, and any incumbrances affecting the same; It is therefore proposed to be enacted as follows:

1. That upon a memorial of any literary work already printed and published, or hereafter to be printed and published, being produced to the proper officer at the office of the registrar of the Court of Chancery in London, it shall be lawful for the said officer, and he is hereby required to register the same, and to give to the party so producing such memorial a certificate of registry in the form (A.) contained in the schedule to this act annexed, and sealed with the seal of office, to be provided in this behalf, on payment of the fee of ten shillings, which said memorial shall be in the form (B.) contained in the schedule to this act annexed, or to the like effect, and shall state the name and the place or places of residence of the author, the title of the work, the persons respectively by whom the same shall have been printed and published, and the date of publication, and shall be signed by the author, or, if he be dead, then by his executor or administrator, and shall be attested by one witness at least; and the said officer shall register the said memorial, by writing a copy thereof fairly in a book to be kept for the purpose, and he shall file and carefully preserve the original memorial.

2. That no evidence shall be received in any Court of law or equity of any copyright, or of any ownership of or in the same, unless such copyright shall have been so registered, and such certificate of registry thereof granted as aforesaid; and the certificate thereof so granted shall, without any proof of the signature

thereto, or of the seal thereon, be received as evidence of the memorial therein mentioned having been registered, and shall be deemed *prima facie* evidence of the title of the person by whom the said memorial purports to be signed to the said copyright.

3. That all assignment of any such copyright, whether by way of sale or mortgage, or otherwise, shall also be registered in like manner, upon producing to the officer aforesaid such assignment, and a memorial thereof; and the said officer shall thereupon indorse upon the said assignment a certificate of registry in the form (C.) contained in the schedule to this act annexed, and sealed with the seal aforesaid, upon payment of a fee of five shillings; which said memorial shall be in the form (D.) contained in the schedule to this act annexed, or to the like effect, and shall state truly the consideration, and whether the said assignment is by way of sale or mortgage, or otherwise, and shall be signed by the author, or some person to whom he may have assigned such copyright, or by their respective executors or administrators; and the said officer shall register the said memorial, by writing a copy thereof fairly in the book aforesaid, and he shall file and carefully preserve the said last-mentioned original memorial.

4. That no assignment of any copyright shall be received in evidence in any Court of law or equity, unless the same shall be so registered as aforesaid, and a certificate of such registry indorsed thereon; and the certificate so indorsed thereon, shall, without any proof of the signature thereto, or the seal thereon, be received as evidence of such instrument having been so registered.

5. That if two or more assignments of the same copyright shall appear to be so registered as aforesaid, that assignment which was first registered shall in all Courts of law or equity be deemed to have priority of that which was registered afterwards.

6. That when any assignment so registered as aforesaid shall have been made by way of mortgage, or as security for the doing of any act, and the mortgage money, with all interest due thereon, shall afterwards be paid, or such act done, then and in every such case, the party to whom such assignment was made, shall re-assign the said copyright to the assigner thereof; and such re-assignment shall be registered in manner aforesaid, and all the provisions hereinafore made with reference to assignments as aforesaid shall be equally applicable to such re-assignments.

7. That if in any suit in the Court of Chancery, or upon petition to the said Court, it shall appear right to the Lord Chancellor to decree or order the register of any such copyright, assignment or re-assignment to be cancelled, it shall be lawful for him so to do; and upon such decree or order being made, and a copy thereof served upon the officer aforesaid, the said officer shall immediately cancel the said register, and the same and the certificate thereof so granted as aforesaid shall from thenceforth be deemed wholly void.

8. That the officer aforesaid shall make and keep an index to such registry, in which the registers shall be referred to alphabetically, according to the surname of the author, stating the surname, and christian or first name of the author, the title of the work, and whether the register is of a copyright, or an assignment or re-assignment; and all persons wishing to inspect such index, shall be allowed so to do upon payment of a fee of one shilling; and if any person shall wish to inspect the said registers, or any or them, he shall be allowed so to do, on payment of the sum of one shilling for each register inspected.

REGULATION OF RAILWAYS.

The following is the substance of the provisions of this bill:

1. Commencement of act.
2. Construction.
3. Notice before opening railway repealed, 3 & 4 Vict. c. 97, s. 2.
4. One month's notice of intended opening and completion of railway.
5. If railway opened without notice, company to forfeit 20*l*.
6. Board of trade empowered to postpone opening.
7. Notice of accidents to be given to the board of trade.
8. Board of trade empowered to direct returns.
9. Gates at level crossings to be kept closed across the railway.
10. Gates opening upon the railways to be locked by owners or occupiers of adjoining lands.
11. Disputes between connecting railways, to be referred to arbitration.
12. Powers of making branch communication with railways, and of entering upon them with locomotive engines to be regulated by the board of trade.
13. Regulation of dangerous level crossings.
14. Arbitrators to be appointed within fourteen days.
15. Vacancy of arbitrator, to be supplied.
16. Appointment of umpire.
17. Power of arbitrators to call for books, &c.
18. Power for railway companies to enter upon adjoining lands to repair accidents.
19. Compulsory powers of taking land for the purposes of railways extended, where thought necessary for safety by the board of trade.
20. Punishments of persons employed on railways guilty of misconduct.
21. Sheriffs to have jurisdiction in Scotland.
22. Penalty on not obeying orders of the board of trade.
23. Communications to the board of trade to be left at their office. Communications by the board, how to be authenticated. What shall be deemed good service on railway company.
24. Meaning of the words "Railway" and "Company."

LEGAL AND MEDICAL CORONERS.

We have frequently stated the grounds on which a *legal* is preferable to a *medical* coroner. The subject, we understand, has been recently agitated in the country; and we, therefore avail ourselves of the communication of an intelligent correspondent, from which we extract the following remarks:

It is not only expedient, but in *all* cases absolutely requisite, that a sound and experienced acquaintance with the general principles of our laws, and an especial apprehension of criminal jurisprudence and the law of evidence, practically as well as theoretically acquired, should be possessed by this proxy of the Crown; and without such attainments, no coroner can efficiently sift the evidence, charge the jury, or draw the inquisition.

Were the question at issue left to the wisdom of our ancestors, an unbroken echo in favour of the legal profession loudly resounds;—were experience to determine, the same decision would follow; but in these philosophical days, such an adjudication must be brought on appeal to a bar, if less tested by successful experiment, yet of greater pretension.

The coroner, is so named, because "he hath principally to do with pleas of the Crown." That in this view the Lord Chief Justice of the Queen's Bench is the chief coroner of the Kingdom; and that the functions appertaining to the office, in addition to the ordinary duty of holding inquests, "*super visum corporis*," and its various and intricate consequential enquiries are, the taking inquisitions concerning shipwreck and treasure trove, and in some instances acting as the sheriff's substitute.

It would be idle to dispute, that a medical man is able to appreciate more fully than any one else, all such evidence as involves direct medical knowledge; but I deny that the most important points in the proofs do, in all or even in the majority of cases cognizable of the coroner, involve such a requisite, or that medical testimony is absolutely required in the greater number of inquests taken. And, moreover, I assert that when the necessity arises for surgical evidence, a medical witness or witnesses, will be always found as fully efficient, for the elucidation of the truth, as if they had presided as judges; whilst had such testimony emanated from the bench, (a state of things inconsistent with the spirit of our Courts of Judicature,) no better could have been obtained: but on the other hand, as coming from the judge, it would be calculated to influence the jury unduly; the scales of justice would often tremble with the weight of evidence on the one side, and that of the coroner on the other.

Besides that of the cause of death, important as it is, other questions of at least equal importance arise for adjudication—such as ascertaining the person by whom the death was occasioned, and the enquiry if it happened "*se defendendo*," or under circumstances which

would constitute the offence murder or manslaughter, involving a knowledge of legal principles and reasoning not to be obtained, I venture to say, by a mere glance. Nor are the rules of evidence to be arrived at by so simple a process; they form a code not so easily digested:—to see that proper questions are propounded to the witnesses, in accordance with the established rules of law, so that a sufficient case be elicited to justify committing the accused for trial, without subjecting an *innocent* person to its shame and suffering, are amongst the most important part of a coroner's duties.

The common forms are not sufficient to assist the coroner in drawing up an inquisition. In ordinary cases he might escape informalities; but on any one deviating ever so little from the usual course, to say nothing of special occasions, the dangers of technical mistakes would be so much multiplied, that a man crudely taught and unpractised, would as often cause the escape of the guilty, as his law of evidence would endanger the committal of the innocent.

I maintain, then, that a mere lawyer, by the very force of his peculiar attainments, is better fitted for the office of coroner, than a mere medical man; and that to make him in every respect the most fully efficient to preside over every case of homicide, he can *ceteris paribus* much more readily acquire (and which, in fact, every well educated lawyer of the present day does acquire,) the requisite knowledge of medical jurisprudence, than a medical man can obtain a sufficiently accurate knowledge of not only that one branch, but others more important to the fit discharge of a coroner's duties, and which indeed, it is neither usual for them to attempt, nor, with but a sufficient exception to prove the rule, have they ever shewn themselves capable of obtaining.

POINTS OF LAW AND PRACTICE, BY QUESTION AND ANSWER.

TRIAL BEFORE SHERIFF.

1. In what cases may a writ of trial be had before the sheriff?
2. What is the mode of proceeding to obtain a writ of trial?
3. In an action of tort, can a writ of trial be obtained?
4. Will a writ of trial be granted where the damages are unliquidated?
5. Can the defendant as well as the plaintiff obtain an order for a writ of trial?
6. Can a judge on the trial of a cause, where less than 20*l.* have been recovered, make any and what certificate affecting the right to costs?
7. To what judge besides the sheriff may a writ of trial be directed?

8. What is the practice as to the attendance of counsel on writs of trial, and the costs of such attendance?
9. Has the judge on such trial the same power as a judge at *nisi prius*, or what powers?
10. What is the course of proceeding after the writ of trial has been executed?
11. When and how can an application be made for a new writ of trial?
12. Under what circumstances will a new writ of trial be refused?

STATE OF THE CHANCERY CAUSE PAPER.

It appears that in the three months during which the five Courts of Chancery have been constantly sitting, the arrear of causes has been largely reduced. We subjoin a report of what was lately said by the *Lord Chancellor* and the *Master of the Rolls* in their respective courts.

On the 12th February, Mr. *Stuart* moved that a particular cause might be restored to the paper of the Vice Chancellor of England, from that of Vice Chancellor Knight Bruce, the latter learned judge having been engaged in it as counsel.

Mr. *Lloyd* opposed the motion.

The *Lord Chancellor* said, the causes were transferred without any enquiry into the circumstances, and a very slight reason was sufficient for restoring them. The reason now assigned was sufficient in the present case. His Lordship added, that there was good ground to hope that the present case would be heard at an early period, for he had caused enquiry to be made into the number of causes in arrear, and it was found that there were only 180 *ready for hearing*. All these would probably be cleared off during the four or five weeks of the present sittings, and the courts would then only have to hear causes arising from day to day. This would be a state of things occurring for the first time during the last 300 years.

This reduction of the Lord Chancellor's list to the comparatively small number of 180 causes, is no doubt occasioned by striking out a large number in which the parties are not prepared, and in which it was not to be expected that they could be prepared. The usual time at which a hearing might be looked for being formerly three *years*, there is no wonder that the practitioners were unprepared for a hearing in three *months*. The evidence could not be taken, and counsel properly instructed at this rail-road rate. We are going

from one extreme to another. Time, however, will set all this to rights, and in the mean while the Court will of course consult the convenience of counsel and solicitors, so far as practicable, in bringing on their cases.

The *Master of the Rolls*, whose list is still crowded, stated to the bar at the sitting of the Court on the 15th instant,—

That in consequence of the state of business in the other Courts, it would shortly become necessary to transfer some of the causes set down to be heard before this Court, to the list of the Lord Chancellor, with the view of having them heard by Vice Chancellor Knight Bruce, and Vice Chancellor Wigram. He also observed that applications had once or twice been made to him of late to advance the hearing of certain causes, which, in justice to the other suitors, he had considered himself under the necessity of refusing. He, therefore, now wished it to be understood, that any parties who were desirous of having an early hearing of their causes might apply to the registrar to have them transferred. They would then be heard in another branch of the Court; subject to this, a general list of the causes set down in this Court would be made out, and they would be transferred to the Lord Chancellor in due course.

This is a very considerate arrangement, and is quite in conformity with the well-known anxiety of the Master of the Rolls to fulfil his important duties in the best and most conscientious manner.

MOOT POINTS.

MARRIAGE IN WRONG NAMES.

In the publications of bands in 1817, a woman named Mary Hodgkinson was called White, a surname entered by mistake in the register of her baptism; but which she had never gone by, or been entitled to. The false name, White, was given to the officiating clergyman, without any intention to mislead, nor did any individual having an interest in the marriage appear to have been deceived; and it was held, that the marriage was void. *The King v. Inhabitants of Tibshelf*, 1 B. & Ad. 190.

From the circumstances of the above case, I am of opinion, that *A's* marriage with *B.* (*ante*, page 273) is void; but if there had been but a variation in the name, or the addition or suppression of a christian name, it would perhaps be otherwise.

STUDIOSUS.

REPAIRING ROADS.

Several parties reside in a place called *D.*, leading out of the high road, through which there

is no thoroughfare; *E.* has a field at the end thereof. They all use the road with horses, carriages, carts, &c.; the several parties to their respective houses, and *E.* to his field. The road is now in a very ruinous and dangerous state, and the parties cannot agree on the principle of repairing it. It has hitherto, occasionally, been repaired by some of them; but there has been no uniformity. If any one or two of the parties were to repair the road, could they, having previously given notice to the others using it, recover their proportion of the expences, or could an indictment be sustained against the parties in-right of their occupation? A. B.

CARRIER, P. 278, *ante*.

If the goods were delivered to the carrier to be delivered to *B.*, the carrier is liable for them. Where a contract has been entered into or can be implied, with carriers, an action of assumpsit may be maintained for such breach. Proof of contract is not necessary, as they may be sued in an action on the case for the injury as arising *ex delicto*. Trover may be maintained against them, if by mistake, or under a forged cover, goods are delivered to a wrong person.

STUDIOSUS.

SELECTIONS FROM CORRESPONDENCE.

LEGAL DISCUSSION SOCIETY.

Sir,

I have much pleasure in addressing you on a subject which I find is very meritoriously taken up by the profession, that of establishing a society for the "sole discussion of legal subjects," for the advancement and improvement of law students. Its efficacy, I think, no one can deny: the only requisite wanting, is its establishment, and which, I have no doubt, may be obtained through the intervention of your pages. In my humble opinion, a more efficacious method could not be adopted for its management, than the one suggested by your correspondent of last Saturday, entitled an "Articled Clerk," namely, after the plan of the late Sir Samuel Romilly. See p. 304, *ante*.

H. H. P.

ANNUAL CERTIFICATES.

Sir,

In the law list, under the head of "certificates," it is stated, "Persons neglecting to obtain their certificates for a year incapable of practising; but they may be re-admitted on payment of the duty and penalty." It afterwards says, "By the 54th Geo. 3rd, c. 144, certificates for attorneys &c. shall be annually taken out between the 15th of November, and the 16th of December in each year, and that all such certificates shall in future expire on

the 15th of November." Has an attorney the *whole year*, mentioned in the first extract I have made, in which he may take out his certificate *without being re-admitted*, or must he be so re-admitted, in case his certificate has not been taken out between the 15th of November and the 16th of December?

A. M.

[The certificate taken out between the 15th of November and the 16th of December, expires on the following 15th of November, and if not renewed by the 15th of November in the next year, a re-admission becomes necessary. Ed.]

ARTICLED CLERK TRADING.

One of my professional friends, an articled clerk, being desirous of promoting his prospects in life during the five years of his articles, and having a small sum of ready cash, desires to place it to the best advantage, and having met with a friend similarly situated, they agree to form a co-partnership in a trade in which they have a good connection, and place a third party in the business to superintend it, and in fact, to carry it on in his, the third party's name, although in reality he would only be a servant to the partners. Neither the time of the articled clerk, nor that of the other partner, would be in the least occupied, except of an evening for the perusal of accounts &c. Now, would this affect the articled clerk's service, and would he be entitled to his admission? No manual labour will be required on his part, nor will he in any way be detained from pursuing his usual professional duties. H. H.

[We think the trading proposed would be decidedly objectionable, and inconsistent with the provisions of the statutes and rules of Court. It would be in the discretion of the Court to admit the party or direct a further service, according to the circumstances of the case. We presume the examiners would send the candidate to the Court. Ed.]

SUPERIOR COURTS.

Lord Chancellor.

PRACTICE.—PETITION OF REHEARING.—ENROLMENT.—CAVEAT.

Although a caveat will not suspend the enrolment of a decree beyond twenty-eight days from delivery of the docket, unless it is prosecuted within that time by the presenting of a petition of rehearing, yet if some of the parties for whom the caveat was entered present their petition in due time, the

other parties to it may present their petition afterwards: there is no limit to them until actual enrolment.

This was a rehearing of a decree pronounced by the late Lord Chancellor in 1839. Sir Charles Wetherell and other counsel were heard for several days on behalf of some of the defendants, trustees of the charity, complaining of the decree.

Mr. Richards was proceeding to address the Court on behalf of Dr. Smith, the Reverends Mr. Richards, Mr. Elsdale, and Mr. Gernon, defendants, who presented a separate petition of rehearing subsequently to the petition presented by Sir C. Wetherell's clients.

Mr. Bethell, on behalf of the relators, and in support of the decree, objected to the right of Mr. Richards's clients to be heard, and moved that their petition be taken off the file for irregularity. It appeared that a *caveat* was entered against the enrolment of the decree. The *caveat* was subscribed by Messrs. Milne and Parry, agents for the respondents. If Mr. Richards's clients did not join in that *caveat*, they were not entitled to a rehearing. The *caveat* was regularly followed up by a petition of rehearing by Sir C. Wetherell's clients, and they were properly entitled; but the other defendants, who did not join in that petition, although they might have joined in the *caveat*, were not entitled. Although the *caveat* suspended the enrolment as against the defendants who prosecuted it regularly, the decree was in effect enrolled as against the defendants who did not prosecute the *caveat* by presenting the petition in due time. By the order of 1698,^a it is ordered that where a *caveat* is entered to stay the signing of a decree in order to its enrolment, such *caveat* shall be prosecuted within a month after the docket of the decree shall be left for the signature of the proper officer, otherwise the *caveat* shall be of no force. That was the case here. A docket of the decree had been left,—some of the defendants entered a *caveat* and prosecuted it, but those defendants did not prosecute it until after the expiration of the month. *Barnes v. Wilson*,^b and 2 Daniel's Practice.^c But another objection to Mr. Richards's clients was, that they have no interest in this decree. Dr. Smith and Mr. Elsdale were head and second masters when the cause was heard, but the former has been since promoted to another office, and Mr. Elsdale succeeded him. The names of the other two petitioners, Mr. Richards and Mr. Gernon, are not in the original record: they have succeeded to the places of masters, and have been made defendants by supplemental bill, but have not yet put in answers. Mr. Elsdale alone, of the four, would be enabled to be heard, if he had petitioned in time.

Mr. Richards and Mr. Little, for the petitioners.—It is open to all parties to ask for a rehearing of a decree until it is actually en-

rolled. 3 Daniel's Practice, 116, and the cases there cited. The drift of their argument on the point of interest, and of Mr. Bethell's reply on both points, may be inferred from the following judgment.

The Lord Chancellor.—It appears that a *caveat* against the enrolment was entered on the part of the petitioners. That was for some time doubtful, but it was ultimately admitted in the course of the argument that the *caveat* was to be considered as the *caveat* of the petitioners. That *caveat* was not prosecuted in the regular manner, according to the order of 1698, and of course there was an end of it. The question is, in what situation do the petitioners stand? Have they a right to petition for a rehearing? I am of opinion in this case that they have such right. There were other parties to the record. They presented their petition for rehearing in due time, in consequence of which the decree has not been enrolled; and I apprehend that it is the rule of the Court that until the enrolment of a decree, any of the parties to the record have a right to petition for a rehearing. No case was cited to the contrary, except what was said to be an analogous case, *Ex parte Wright*,^d a case with respect to the staying of a certificate in bankruptcy. By the order and rule and practice of the Court in cases of bankruptcy, after the notice of the certificate has been published in the Gazette, the party wishing to stay the allowance of the certificate must present a petition within twenty-one days. In that case a petition had been presented within the twenty-one days, in consequence of which the allowance of the certificate was stayed as a matter of course until the hearing of that petition. After the twenty-one days another party presented a petition, conceiving that he had a right to petition at any time before the allowance, the allowance being stayed by the operation of the other petition. The Court said, No: the rule is express and positive; you must petition within the twenty-one days. That case obviously has no reference whatever to the present case, because there is no limit as to the time within which the petition for rehearing is to be presented; it only must be presented before the enrolment. There is no case, therefore, in opposition to the principle which I have stated, and I conceive that any party has a right to petition before the enrolment, although that enrolment may have been stayed by other parties petitioning within the time under a *caveat*. That was the first objection which was urged. The second objection was that none of these parties had a right to petition for they had no interest. With respect to Mr. Richards, it is clear he has an interest: he was on the record at the time the decree was pronounced, and he still holds the situation of High Master. There is an end therefore of the objection, as far as relates to Mr. Richards. With respect to Mr. Elsdale, and also to Mr. Smith, they have, I think, clearly an interest, although they have resigned their situations, and successors have been appointed.

^a Beames's Orders (No. 309).

^b 1 Russ. & M. 486.

^c Page 682.

^d 1 Glyn. & Jam. 352.

Still, it appears on the record, and by the answers, that they are entitled to an allowance as far as the trustees have authority to make a retiring allowance, in respect of their past services. The grant of that retiring allowance depends on the scheme which is now under consideration. The Master has a power to alter that scheme; he may so alter the scheme as to affect their retiring allowances; therefore, they have clearly an interest. Mr. Richards, therefore, Mr. Smith, and Mr. Elsdale have an interest. With respect to Mr. Gernon, it does not appear to me, that he ought to have been made a party to the petition, and for this reason, he was brought before the Court after the decree was signed, by a supplemental bill, or an original bill in the nature of a supplemental bill. To that bill he has appeared, but he has not answered, and I believe, that until a party has answered, he cannot be heard with respect to an original decree; nor, as I can conceive, can he be heard on a rehearing of that decree. A party who is brought before the Court after the decree by supplemental bill, if he has answered, is entitled to take a part in a rehearing according to the case of *Hill and Chapman*, 3 Bro. C. C. 391, and 1 Ves., jun. 405. In this case, Mr. Gernon has not answered, and a party who has not answered, can, I conceive, take no part in a rehearing. It is an irregularity, therefore, in this petition, that he has been made one of the parties; but that irregularity may easily be obviated, as I undoubtedly, in a case of this description, shall give the party an opportunity of taking his name out of the petition, and when his name is taken out, then the petition will be free from all irregularity; for, I think, it would be a reproach to the administration of justice in a case of this kind, which my predecessor stated, was a case of vast importance, if I prevented parties, who are interested in the decree, from having an opportunity of rehearing that decree, merely on a point of form of this description. I think, therefore, that the justice of the case will be, that Mr. Richards' clients should have an opportunity of amending the petition, by striking out Mr. Gernon's name.

Attorney General v. Earl of Stamford, and others, at Westminster, January 19th and 31st, 1842.

Rolls.

PRACTICE.—SOLICITOR AND AGENT.—DELIVERY UP OF PAPERS.—COSTS.

The Court having, upon the application of a solicitor in the country, ordered his town agent to deliver up all papers in his possession, belonging to such solicitor, within a limited time, and the papers being very voluminous:—Held, that the solicitor was not entitled, as a matter of course, to the four day's order, in consequence of the agent not being prepared to deliver up all the papers by the time stipulated, due dili-

gence having been used by him for the purpose of complying with the terms of the order.

Held also, that the agent was not subject to costs, for having given notice of motion for a four day order on the day appointed for delivery up of the papers, and not proceeding with it in consequence of the papers being subsequently given up.

On the 4th of August last, an order was made, on the petition of Mr. James Husband, a solicitor resident in the country, by which his London agent, Mr. George Smith, the respondent, was ordered on payment into Court by Husband, of 1000*l.*, and his delivering to Smith a certain mortgage deed, to deliver up all deeds, papers, and writings in his possession or power, belonging to Husband; and the time stipulated for Smith's performance of the order was the 27th of November. Smith in consequence proceeded without delay to put all the papers together, and to make the necessary schedules of them, but owing to their great number he was only prepared with the common law papers by the time stipulated, which he delivered up; and these being gone through, it was arranged between the parties that the remainder of the papers, which related principally to Chancery proceedings should be delivered on the 6th of December. Husband, however, having complied with his part of the order, proceeded to put himself in a situation for obtaining an attachment against Smith, if necessary, and accordingly on the 27th of November, the day limited by the order for Smith's handing over the papers, gave notice of motion for the usual four day order, but on the 6th of December, the remainder of the papers were delivered up. Smith then insisted upon having the motion of which Husband had given him notice brought on, in order that he might have the costs of it, on the ground of its being wholly unnecessary.

Pemberton, in support of the motion, after stating the above facts, contended that the order not having been complied with by Smith, the petitioner was justified in preparing himself for applying for an attachment, in case it should be required; and that the motion was therefore well founded.

Kindersley, *contra*, urged that the conduct of Husband had been most vexatious and oppressive, and that Smith was therefore entitled to the costs of the motion. The order, although made on the 4th of August was not served till the 20th of November, but, notwithstanding, Mr. Smith was not bound to take any notice of it till the service; he, immediately on its being pronounced, proceeded to take the necessary steps for complying with its directions, and he and his clerks had been engaged the whole of the vacation in collecting and sorting the various papers belonging to the petitioner, and making proper schedules of them; and had he not used the greatest diligence it would have been impossible for him to have been ready to deliver up the papers even by the time he did.

The Master of the Rolls said, that he knew

quite enough of the relation between the parties to be satisfied that it must have been a very laborious task to make out the schedules necessary for complying with the terms of the order of the 4th of August. Mr. Smith had acted quite in accordance with his duty, in commencing to prepare those schedules immediately after the order was pronounced, and if he had not done so he would not have been in a situation to deliver up the papers even now. According to the terms of the order, the papers were to be delivered up on the 27th of November; and before that time arrived, Mr. Husband took the necessary steps for being prepared to enforce the order, which he was perfectly justified in doing. His lordship added, he did not say that Mr. Smith did not do all that could be required of him, but there was sufficient motive for Mr. Husband to take the steps he did. It was said, that Mr. Husband had acted vexatiously, but all that he had done was to give notice of motion for the four day order, and as the papers had not been delivered up by the time appointed, it was not unreasonable for him to say that he would place himself in the most advantageous position. His lordship said, that had the motion been made, he should not have granted the order, but should probably have allowed ten days or a fortnight. As to the other circumstances that had been referred to, although it appeared that Mr. Smith had done every thing in his power to comply with the directions of the order, yet many of these circumstances had reference to dates subsequently to the day appointed for delivering up the papers; and therefore as no costs had been asked by the notice of motion, no costs should be given on either side.

Ex parte Husband, re George Smith, Jan. 27th, 1842.

Vice Chancellor of England.

PRACTICE.—CONSTRUCTION OF THE 12TH ORDER OF 1828.—OF THE 15TH AND 16 ORDERS OF 1833, AND OF THE 14TH ORDER OF 1837.

Where an order has been made by mistake for a reference to the wrong master, to determine as to exceptions taken to an answer for scandal and impertinence, it is a matter of course to order the reference to be made to the proper master, and therefore such motion need not be made before the judge marked on the bill.

The circumstance of such reference having been proceeded with before the vacation master, instead of before the master in rotation, will not prevent the Court from rectifying the error, and referring the matter to the master in rotation; notwithstanding the time may have expired within which, according to the 12th order of 1828, the order of reference would be considered as abandoned.

This was a motion of a special nature, and the circumstances under which it was brought before the Court were the following:—

The bill was filed in July last, and on the 13th of September, the defendant (his time for answering having expired) obtained the usual certificate of the bill having been filed, and got it indorsed by the clerk at the public office, appointing Mr. Lynch as the master in rotation to whom the cause was to be referred. On the same day, the defendant obtained a warrant from Master Farrer, the vacation master, for time to answer, which was subsequently attended by the solicitors for both parties. The answer was filed on the 4th of November, on the 11th of January exceptions were filed to it by the plaintiff for scandal and impertinence, and on the 14th of January an order was made for referring the exceptions to the master in rotation. On the 15th of January, the clerk at the public office indorsed the usual certificate, as if no previous reference had been made, by which Master Farrer was appointed. The parties accordingly attended before Master Farrer on the 19th and 26th of January, and proceeded with the reference, when three of the exceptions were discussed, two of which were allowed, and one disallowed; but, on the 28th of January, the defendant's solicitor, having, as was alleged by his counsel, then for the first time discovered that the proceedings had been before the wrong Master, objected to going further, whereupon the plaintiff gave the present notice of motion, the terms of which were, that the reference directed by the order of the 14th of January, to the master in rotation might be ordered to be proceeded with before Master Farrer, and that he might proceed with the same in all respects, with regard to the taxation of costs &c., as if he were the Master in rotation to whom the same had been directed to be made; and that he might be at liberty to certify a further time, if necessary, for the purpose of making his report; or that it might be referred to Master Lynch, the Master in rotation to whom the cause stood referred, to proceed with the said exceptions; and that in taxing the costs of such reference, and consequent thereon, such last named Master should be at liberty to tax the costs of the proceedings already had before Master Farrer, and direct the same to be paid in the same manner as the costs of the reference. The cause was marked for hearing before the Master of the Rolls.

Stuart, for the plaintiff, contended, that as the defendant had acquiesced in the proceedings before Master Farrer, he had waived any right that he might otherwise have had to object, and that the second order by which Master Farrer was named the Master in rotation, having been acted upon, the proceedings were rightly taken before him.

Wakefield and James Parker, *contra*, insisted that the whole proceedings before Master Farrer were bad, and that as the time had expired, within which, according to the twelfth order of 1828, the Master should have made his report, and Master Farrer having no power to extend the time, the exceptions

must fall to the ground. In the first place, Master Farrer had no jurisdiction to proceed, and in the next place, the time having expired within which the order was to be considered as abandoned, the same could not be prosecuted before Master Lynch.

The *Vice Chancellor* said, it was clear that the reference ought to have been proceeded with before Master Lynch, but as what had been done was done by mistake, there could be no waiver on either side. With regard to the first part of the notice of motion, as he had no power to alter or vary the order made by the Master of the Rolls, in pursuance of which Master Farrer had proceeded, he could not grant that part of the motion. It was then asked, that it should be referred to Master Lynch to look into the exceptions, and although it had been urged on the part of the defendant, that the exceptions ought not to have been filed, still the Court could not, where the exceptions had been signed by counsel, take upon itself to say that it was not a case for exceptions. As therefore, the six days had elapsed within which the order should be made for the reference to the Master according to the 11th order of 1828, the order required for referring the exceptions to Master Lynch was an order of course, although rendered special by the circumstances that had occurred. As to the third part of the notice of motion, if the parties did not consent, he should then simply make the order asked for by the second part, and as the whole proceedings had evidently taken place under a mistake, he should make it without costs.

Crow v. Colombine, Feb. 8th, 1842.

Queen's Bench.

[Before the four Judges.]

BILL OF EXCHANGE.—TRUST.

Certain bills of exchange appeared to be regularly indorsed in the name of S. M. The business he had formerly carried on had been assigned to trustees, but for some time he was permitted to interfere in its management, and in the course of doing so, to indorse bills required for the business. This trust business was carried on in his name. He at the same time carried on another business on his own private account : Held, that the bills being prima facie duly indorsed, the burden of showing that they were indorsed for the purposes of S. M.'s private business, and not for that of the trust, lay on the defendants, the trustees appointed by the creditors.

Assumpsit by the indorsee against the indorsers of bills of exchange. The bills were alleged to have been drawn upon and accepted by different persons, and to have been indorsed by the defendants, trading under the firm of Samuel Maine & Co., to the plaintiff. The defendants pleaded that they had not had due notice of the nonpayment of the bills, and on

the pleas to that effect, a special verdict was taken, and the judgment of the Court was last term given for the defendants. Pleas had also been put upon the record, denying the indorsement of the bills by the defendants, and on those pleas evidence was adduced to shew that the creditor of Samuel Maine had constituted the defendants trustees and managers of his estate and effects ; that the business carried on by the trustees continued in his name, and that Maine had afterwards, while permitted to act in the management of the trust business, indorsed bills in that business as well as in a private business carried on by himself and for his own private account. The question as to the effect of this habit of dealing with regard to the estate placed under the administration of the trustees, was argued at the same time with that upon the sufficiency of the notice, and the Court took time to consider it.

Lord Denman now delivered the judgment of the Court. He said, "We gave judgment in this case last term, so far as the right to recover was affected by the question of the sufficiency of the notice of dishonour, and we then stated our opinion that there had not been sufficient notice of the dishonour of the bills of exchange, which fact turned the balance of account in favour of the defendants, and therefore entitled them to judgment. But for the purpose of settling the right to costs, it is necessary that we should give a further opinion, and determine whether the defendant is bound by the indorsement on the bills. The defendants, it appears, were trustees for the business of one Samuel Maine. Their indorsements of his bills were necessary for the purpose of carrying on the business of that person. *Prima facie* the indorsements on these bills were theirs, and thus they appeared to be bound to the indorsees. But it further appeared that Maine, besides the business carried on by the trustees, had carried on a business of his own and in his own name, and it was therefore contended on behalf of the defendants, that the burden of proving that the indorsements were actually made by the defendants or for the purposes of the trust business, and that the indorsements had not been made by Maine in his separate business, was thrown upon the plaintiff. It was shewn that for several years bills used for the trust business, had been indorsed by Maine, and that they had not been exclusively indorsed by the trustees till after he had ceased to interfere in the business, which was afterwards taken under the exclusive management of the trustees. *Prima facie*, therefore, we think that the burden of showing that the indorsement was made by Maine for his own private account, and not by the trustees for the purposes of the trust, was thrown upon the defendants; and as that was not done, the plaintiff on that question of fact, was entitled to judgment.

Furze v. Sharwood and others, H. T. 1842. Q. B. F. J.

Queen's Bench Practice Court.

NEW TRIAL.—LACHES.—DISCHARGING RULE.
—INTERPLEADER.

A new trial having been moved for, the rule was made absolute on payment of costs. These, however, were not paid within a reasonable time, and the Court discharged the rule for a new trial, by a rule absolute in the first instance.

A rule was obtained in this case under the Interpleader Act; and the Court directed an issue to be tried for the purpose of litigating the right of the parties. It was tried, and a verdict found for the plaintiff. On application afterwards, the Court set aside that verdict, and directed one to be entered for the defendant. It was then, however, at the instance of the plaintiff, made part of that rule that the plaintiff should be at liberty to have a new trial on payment of costs. Subsequently several applications were made to him for these costs, but without success.

Byles now moved that the rule so obtained should be discharged. The question was, whether the noncompliance with the condition of paying the costs did not discharge the rule at once without any application. At any rate, the defendant was entitled to have a rule to discharge the plaintiff's rule, absolute in the first instance.

Patteson, J.—I think you may take a rule absolute in the first instance to discharge the plaintiff's rule. Should the plaintiff be desirous of changing that rule, he may do so by an application for that purpose.

Rule accordingly.—*Champion v. Griffiths*, H. T. 1842. Q. B. P. C.

FLEADING.—TROVER.—NOT POSSESSED.—
COSTS.—LIEN.

Under the plea of "never possessed" in an action of trover, the defendant may set up a lien on the goods in question, in respect to a claim of toll, and therefore the plaintiff is entitled to costs of evidence prepared to meet the claim, although the defendant declines to raise that question.

This was an action of trover for certain sacks of corn seized by the defendant, under a claim to toll, under these circumstances. It was contended that all persons landing their goods at a certain wharf were bound to pay a certain toll in respect of such landing, and that if it was not paid, the defendant, who was the proprietor of that wharf, had a right to seize them until the toll was paid. The goods in question were accordingly seized in exercise of that right, and this action was brought accordingly. The defendant pleaded, first, not guilty; secondly, not possessed. The defendant, at the trial, did not raise the question as to the right to toll under the second plea, and the plaintiff had a verdict. On taxation, the Master allowed the plaintiff the costs of an office copy of a judgment between the parties in the cause, in which the right of the plaintiff to be exempted from the payment of tolls, as being an inhabitant of the township of Shilling-

worth, had come in question. It was contended before that officer, that the costs in question could not be allowed, as the plaintiff's exemption from that toll could not have been litigated on the form of pleading on the record. Being allowed,

V. Lee obtained a rule nisi for reviewing the Master's taxation.

Gray shewed cause, and contended that under the plea of not possessed, it was perfectly competent for the defendant to raise the question as to the right of toll. If so, the plaintiff was entitled to be prepared with evidence to meet that claim by a record between former parties, but privies to the present parties, in which the exemption of the plaintiff was shewn.

V. Lee supported the rule.

Wightman, J., thought that under the plea of not possessed, it was perfectly clear that the claim to the toll might have been brought into dispute, and therefore the plaintiff had a right to be prepared with the evidence allowed on taxation to meet this claim. The rule must therefore be discharged, with costs.

Rule discharged with costs.—*Webb v. Tripp*, H. T. 1842. Q. B. P. C.

Common Pleas.

NOTICE OF DISHONOUR OF A BILL OF
EXCHANGE.

Where the notice of dishonour of a bill of exchange in an action by an indorsee against the indorser, describes the drawer and acceptor as such, it is no objection to the notice that it does not specify the defendant to be the indorser of the bill.

This was an action by an indorsee against the indorser of a bill of exchange, to which the defendant pleaded, no notice of dishonour. The cause was tried before *Coltman, J.*, at the sittings in H. T. 1842, when a notice was proved in the following terms: "I beg to inform you that the bill of exchange for 350*l.*, drawn by *J. Nepean* on *H. Moore*, and accepted by him, was yesterday duly presented for payment, and was dishonoured, and now lies unpaid, with 1*s.* 6*d.* notage, at this bank; and I have to request your immediate attention to the same." The notice was signed by *J. Pollard*, manager of the London Joint Stock Bank, and was addressed to the defendant. An objection was made to the notice that it did not describe the defendant as being a party to the bill, or as having any connection with it, but the learned judge over-ruled the objection, and a verdict was found for the plaintiff.

Mr. Serjt. Channell now moved for a new trial on the same ground, that the defendant was not described as the indorser in the notice, and cited *Shelton v. Braithwaite*, 7 M. & W. 436.

Tindal, C. J.—The defendant must have known that he was intended to be charged as indorser. The notice is addressed to him, the other parties to the instrument are described, and the only position in which he could stand is that of indorser.

Rule refused.—*Phelps v. Keily*, H. T. 1842. C. P.

AMENDMENT OF DECLARATION.

The declaration stated that the plaintiff had employed the defendant to lay out a sum of 942l. in a government "annuity," for his life, and alleged as a breach that he had laid out the money in a private company: the plaintiff, at the trial, proved an employment of the defendant to lay out the money in a government "security:" Held, that it was an amendable error within the 3 & 4 W. 4, c. 42, s. 23.

The declaration stated that the plaintiff, at the request of the defendant, had employed the defendant to lay out a large sum of money, to wit, the sum of 942l., in the purchase of a government annuity; and that the defendant had promised the plaintiff to lay out and invest the said sum for him in a government annuity, for the term of the plaintiff's life, and not otherwise; yet the said defendant, not regarding his said promise, laid out and invested the said money in the purchase of an annuity in the Royal Union Life Annuity Office. Pleas, non assumpsit; and secondly, that the defendant did not receive the money for the purpose alleged in the declaration. The cause was tried before *Coltman, J.*, at the sittings in the present term, when the plaintiff failed to prove the agreement which was specifically alleged in the declaration; but his attorney was called, who stated that in a conversation which he had had with the defendant, he (the attorney) had told him that it was a serious affair, for that he had received the money for a particular purpose, and yet that he had laid it out in the concern in question; and a letter was also put in, written by the defendant to the plaintiff, in which the former spoke of his agreement to lay the money out in a "government security." The plaintiff thereupon applied for leave to amend the declaration by substituting the word "security" for annuity, which amendment was permitted, leave being reserved to the defendant to move to enter a nonsuit.

Mr. Serjt. Bompas now moved accordingly, and contended that the amendment was not one within the meaning of the 3 & 4 W. 4, c. 42, s. 23, and that the defendant having pleaded that he did not receive the money for the specific purpose alleged, the plaintiff ought not to have been permitted to amend.

Tindal, C. J.—The question is, whether this was an amendment material to the merits of the case, or of the defence intended to be set up by the defendant. I cannot conceive how it could be so material, because if the plea put on the record were an honest plea, it would equally apply to the allegation that the money was given for the purpose of being invested in a government annuity or security. The real question upon that plea was, whether the money was to be laid out with the government or a private company, and I cannot imagine how the defendant could be prejudiced by what has been done.

Maucl, J.—This is one of those simple and short amendments, which, not affecting the

merits of the case, appear to me to fall peculiarly within the meaning of the act.

Rule refused.—*Gurford v. Daley*, H. T. 1842. C. P.

PARLIAMENTARY INTELLIGENCE RELATING TO THE LAW.

House of Lords.

The following Bills have been brought in.
For regulating Buildings in Large Towns.

Lord Normanby.

For the improvement of certain Boroughs.

Lord Normanby.

For enabling Ecclesiastical Corporations to grant Leases.

The Bishop of London.

For enabling Incumbents of Benefices to grant Leases.

The Bishop of London.

To amend the laws relating to Loan Societies.

House of Commons.

PRIVATE BILLS.

The following are the further Resolutions of the House on this subject:—

1. *Resolved*, that with respect to all petitions for private bills presented in the present session, which proceed from the same parties, or some of them, and which are substantially for the same objects as were sought by any bills which had passed the second reading in the last session of the last parliament, and were pending at the dissolution of that parliament, a compliance with the requisite standing orders preparatory to the introduction of such bills in that session, be deemed a sufficient compliance with the standing orders of this house, so as to authorize the introduction of such bills in the present session, provided it shall be proved, that notices of the intended application to introduce such bills shall have been given in the London, Edinburgh, or Dublin Gazette, as the case may be, and in some newspaper of the county or districts to which such bills relate respectively, in the months of October or November last.

2. *Resolved*, That with respect to such petitions the minutes of the proceedings of, or the minutes of evidence taken by, the committee on petitions for private bills in the last session of the last parliament, be taken by the committee on petitions for private bills in the present session, as evidence of the compliance with the said standing orders: but, such committee may call for further evidence, if in any case they may deem it necessary.

3. *Resolved*, That the committee upon any private bill do examine, in the first place, whether the said bill be for the same purpose as any bill which was presented in the last session of the last parliament, and contain the same clauses and provisions as were contained in such former bill in the last stage of its proceeding, and, whereupon any proceedings were pending on the dissolution of the

last parliament; and, in such case, that all minutes of evidence, together with any documents therein referred to, which were taken before the former committee on such bill, be received in evidence of the allegations therein contained.

4. *Resolved*, That, to enable the parties promoting any such bill to avail themselves of the last mentioned resolution, they shall, after the introduction of such bill, and previously to the second reading thereof, give a notice, once in the London, Edinburgh, or Dublin Gazette, as the case may be, and once in some newspaper usually circulated in the district or districts to which the bill specially relates, that it is their intention to proceed with the bill, and to avail themselves of the above resolution; and that the committee on the bill do examine how far such resolution has been complied with, and do report the house on the report of the bill.

14th February, 1842.

The following Bills have been brought in:—

For Registering Copyrights and Assignments, and better securing the property therein.

Mr. Godson.

[For second reading. See the Bill, p. 309, *ante*.]

To allow Writs of Error on Mandamus.

The Attorney General.

To alter the Law as to Double Costs, and other matters.

The Attorney General.

Notices of Bills:—

To regulate the Sale of Parish Property.

Sir E. Knatchbull.

For the more effectual inspection of Houses, licensed at Quarter Sessions for the Insane.

Lord G. Somerset.

Bill passed:—

To amend the Laws relating to Loan Societies.

COURTS SELECTED BY EQUITY QUEEN'S COUNSEL.

THE last twelve Queen's Counsel at the Chancery Bar have not all yet filed off into separate Courts. Some practise before the five Courts, and some before the Lord Chancellor and the three Vice Chancellors. Mr. *Koe*, Mr. *Loundes*, and Mr. *Walker*, have selected the Lord Chancellor and the Vice Chancellor of England; and Mr. *Russell*, and Mr. *Wigram*, the Courts of the Lord Chancellor and Vice Chancellor Knight Bruce.

Some of the gentlemen previously promoted to silk gowns, are not quite settled, and amongst so many, it is difficult to make a positive arrangement. The main point will be

that the favourite leaders should confine themselves to one Court, as Mr. *Pemberton* does, and as did Mr. *Knight Bruce*.

ATTENDANCE OF THE QUEEN'S BENCH MASTERS.

The following notice has been placed up in the Master's Office:

The masters will attend four days a week, after Saturday the 19th instant, viz.: *Tuesdays, Wednesdays, Thursdays, and Fridays*, and one master will be in attendance at one o'clock, on each of the other days.

THE EDITOR'S LETTER BOX.

We think that the gentleman who has served his time, and been admitted as a *Proctor*, must, in order to be called to the bar, keep twelve terms. He clearly cannot practise as a proctor and a barrister at the same time.

W. M. will probably perceive that his communication has been anticipated at p. 296.

If a correspondent at Wolverhampton will send us the communication he proposes, it shall be considered, and, if approved, will be inserted without any expence to him.

"A Solicitor," referring to the following paragraph at p. 224, doubts its accuracy:—"The regulations made by the Benchers of the *Middle Temple*, in February, 1835, enabled persons who had been members for three years, during which they had kept twelve terms, to be called to the bar. This has been rescinded, and the former regulation requiring a membership of five years is now in force." We believe the regulation to be as stated above.

We are sorry that "One, &c." is not pleased. It is hard to please every body, and we trust he will have some consideration for the tastes of other readers, and allow us to exercise our best discretion in the matter in question.

"Gent, one, &c." is informed that the publisher of the *Legal Observer* will forward the ordinary number to him in the country, by post, for 7d., or, a double number, for 13d.

The proposed improvement in the law, to prevent the fraudulent concealment and destruction of Wills shall be considered.

The letters of S. P. R.; "Homo"; and "An Articled Clerk" have been received.

The Conveyancing Questions shall be considered.

A letter has been left at the publisher's, for a correspondent, who was noticed p. 304, *ante*, relative to the establishment of a *Legal Discussion Society*.

"A Constant Reader"; "Jus"; X. Y. Z.; and "An Old Subscriber," shall be attended to.

The Legal Observer.

SATURDAY, FEBRUARY 26, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

REFORM IN CHANCERY.

No. III.

BEARING in mind the division of this subject which we laid down in our first article (*ante*, p. 273.) it is our intention, during the course of the present session, to address ourselves to such parts of it as it may seem necessary to recal the attention of our readers; and we can only hope that the most practical of our readers will give us their attention. We are not devoting our space to mere idle speculations; we are endeavouring to facilitate the working out of the great change in the procedure of the Court of Chancery, which is now taking place. We are quite satisfied that unless practitioners in that Court will endeavour to understand the reasons of the changes which shall be made, and attend, step by step, to the course which they are taking, they will never properly understand them. We cannot, therefore, in our opinion, employ our time or space more usefully than by giving the fullest licence to the discussion of the whole subject of Chancery Reform; because public and professional attention is directly called to it, and there will certainly be great and further alterations made in the course of the present year. And we are quite sure that in the discussion of it, it is unnecessary for us to disclaim all party feelings whatever. We look at the change proposed with reference only to the benefit to be conferred by it. We rejoice in the present state of parties for one reason, that a measure, if good, can now be carried, which, for some years past, it could not.

The portion of the subject to which we now wish to call the attention of our readers is the supreme appellate jurisdiction, and we do so because it is to be brought

before the House of Lords in the ensuing week by Lord Campbell. We do not know what it is his Lordship may propose, but we would fain hope that his plan may be that which has from time to time been urged in these pages, and which has been made familiar to the public by every recent writer on the subject, without any distinction of party. Mr. Burge and Mr. Spence, Mr. Miller and Mr. Lynch, all well informed on the point, as well from large practice as from much reflection; all these gentlemen concur in recommending the plan to which we have already briefly alluded.^a We have said that there should be one great Court of appeal in the country, and not two Courts of Appeal with co-ordinate jurisdiction, neither of which is bound by the decisions of the other; and if this be so, we think it will hardly be disputed that this Court should be the House of Lords. The decisions of this great Court have always been held in the highest esteem and veneration, while those of the Privy Council have certainly never obtained the same respect. Indeed it is not until lately that they have been reported at all, and yet it must be remembered that the Privy Council is the Court of ultimate resort in some of the most important jurisdictions which can be brought before a court of justice. Admiralty, ecclesiastical, and colonial appeals very frequently relate to subjects of the highest interest, both in the amount of property involved and the bearing of the question to be decided. And who are these causes to be decided by? The Judicial Committee Act has apparently, and on the face of it, assembled a most efficient Court. There are, seemingly, the persons the best qualified to decide at hand, but we all know what is

^a See p. 274, *ante*.

everybody's business is nobody's business, and of all the proposed ingredients for the composition, it has almost constantly happened since the establishment of the Judicial Committee, that very few indeed have appeared. Indeed, the whole attendance is eleemosynary, and while we are quite willing to admit that the decisions made by the Judicial Committee are unexceptionable, still we object to this being the state of one of the great courts of appellate jurisdiction of this country. Neither, it is to be remembered, is the Judicial Committee of any standing among the institutions of the country. It was a mere experiment of the year 1834—a year certainly the most fertile in experiments of any that we remember, and it appears to us to be an experiment that has failed. We conceive the remedy for all this is to transfer the business of the Judicial Committee to the House of Lords, and to give that Court the whole ultimate appellate business of the kingdom. It is highly probable that the House might require some addition to its judicial strength if this accession were made to its business; but at all events it would require a prolongation of its sittings. If this were done, and if according to the plan of Lord Cottenham, proposed in 1836, the Lord Chancellor were established as head of this Court, much would be done to form an efficient Court of Appeal. We shall very shortly return to this subject.

THE LAW OF JOINT STOCK COMPANIES.

LIABILITY OF DIRECTORS.

THE question how far directors are liable for misrepresentations contained in the prospectus of the company is one of considerable interest. These documents usually err on the side of exaggeration: they are composed with sanguine views, and although not usually intended to mislead, are certainly designed to give the best colour to the undertaking. One main point in this consideration is, of what nature a prospectus may be reckoned to be. It is not necessary, in any case to prove that a party absolutely knew a statement to be false, to render him liable for it. Where there is a contract between two parties, the representation of a material fact, contrary to the truth, is fraudulent in the language of the law, although the party making it supposes it to be correct;^a and on a repre-

sentation to induce a party to make a contract. Lord Mansfield^b lays it down generally, that it is equally false for a man to affirm that of which he knows nothing, as it is to affirm that to be true which he knows to be false. However, there must be a contract. In *Pasley v. Freeman*,^c which has always been looked upon as a leading case on this question. Mr. Justice Grose says, "The cases on this head are brought together in Bro. tit. *Deceit*, pl. 29, and in Fitz. Abr. I have likewise looked into Danvers, Kitchens, and Comyns, and I have not met with any case of an action upon a false affirmation except against a party to a contract, and where there is a promise, either express or implied, that the fact is true which is misrepresented." And it would seem from a recent case,^d that a prospectus does not amount to a contract, and that, therefore, to render themselves liable to an action for misrepresentations contained in it, it is not enough to shew that the representations are false. If the directors acted upon a fair and reasonably well grounded belief that they were true, they are not responsible for them, however unfounded they may turn out to be. It was also held in the same case that to entitle a party to maintain an action upon the case against the Directors of a Joint Stock Company for false and fraudulent misrepresentations in the prospectus and scrip-certificates issued by them, it must distinctly appear that he became the purchaser of shares upon the faith of such representations. We extract a portion of the judgment of *Tindal, C. J.*

"That the plaintiff did become the purchaser of shares in the mines, in consequence of the representations held out in the scrip-certificates, the jury, upon a full consideration of the facts and circumstances, have thought fit to negative; and before we set aside their verdict, we must, according to all the practice of Westminster Hall, be satisfied that the conclusion they have arrived at is manifestly founded in error. Let us see how the facts stand. The scrip-certificates were issued in 1835, at a nominal value of 20*l.*, holding out as usual, vast promises. The plaintiff became the purchaser of certain shares in the months of July and August 1836, at the price of 5*l.* per share. It was for the jury to say whether, as matters then stood, the representations held out in the scrip-receipts could have induced the plaintiff to lay out his money. One material point for their consideration was, the market price of these scrip receipts as compared with their nominal value. They

^b *Rawson v. Watson*, Cowp. 758.

^c 3 T. R. 53.

^d *Shrewsbury v. Blount*, 2 Scott, 588, N. S.

^a *Cornfoot v. Fouke*, 6 Mee. & Wels. 358.

might very properly consider that the fact of his purchasing 20*l.* shares at 5*l.* each was enough to put the plaintiff upon inquiry as to whether the concern remained in the state in which it was represented to be at the time the scrip was first issued. Once issued, it is to be observed, the directors had no power to recal the scattered scrip. Then in April 1836, a public meeting of the shareholders was held, and a report published, tending very much to impair the primary statements in the scrip certificates. It is true there was no evidence to shew that this report ever came to the knowledge of the plaintiff. But the jury were at liberty to reason a little on the subject. A very slight inquiry would have satisfied the plaintiff that the hopes held out by the scrip-receipts were fallacious. I, therefore, see no objection to the jury concluding, that the plaintiff might have arrived at a knowledge of the true state of the mine, had he used reasonable and ordinary diligence. The whole was matter for the consideration of the jury. They did not believe the plaintiff had been misled. It must be remembered, too, that the plaintiff is an attorney. That fact I urge no further than this, that it may be fairly assumed he is a man of skill, and one not likely to have parted with his money upon the mere faith of representations of this sort, which his experience and knowledge of business must have taught him to be uniformly replete with falsehood.

It has been objected that the learned judge (Mr. Justice *Erskine*), erred in rejecting the book said to have been kept by Malachi. That objection received its answer in the course of the discussion. To make it admissible, there ought to have been some evidence that it was kept by Malachi in the course of his employment as the agent of the defendants: there was nothing to identify the defendants with it at the time it was rejected. It has been further objected, that the conversation between Grout and Harrison, two of the defendants, and between Grout and Malachi, upon the subject of the mine and its prospects, were not legitimate evidence on the part of the defendants. Undoubtedly they were not evidence that what was said by Malachi to Grout, and by Grout to Harrison, was true. But, considering what was the subject-matter of the inquiry, the issue to be tried by the jury being whether or not the defendants had acted with *bona fides*, I am of opinion that the conversations could not properly be excluded. Upon the whole, the learned judge who tried the cause, expressing no dissatisfaction with the verdict, I am of opinion that it ought not to be disturbed.

It will be seen from the same case, that directors are not liable for misrepresentations made by their agent, if he, in fact, made them without their knowledge or instruction, and in reality deceived them as well as the shareholders.

LOCAL COURTS.

As we expected, the present session bids fair to be a memorable one in law reform. Lord *Cottenham* has introduced a bill for establishing local courts, and another bill for giving to these local courts a jurisdiction in bankruptcy, insolvency, &c. These bills are the same bills that were brought into the House of Commons in the last session, and have already been printed in this work, (see the first, 21 L. O. 309, and the last, *ante*, p. 183.) They were renewed by Lord *Cottenham* on Monday last, and the Lord Chancellor at the same time stated that he would shortly introduce a bill on the subject of local courts. This was stated by Sir James Graham in the House of Commons, to be intended to include claims under 15*l.*, but, whether simple debts or claims on contracts and for damages, was not stated. When the government bill is brought in, we shall review the whole subject. In the meantime we retain our opinion that any extensive measure on the subject is not advisable.

Of late the jurisdiction has been extended to 5*l.* or 10*l.*, and in some instances to 15*l.* The Small Debt Courts Acts which have been recently passed, have generally provided for their abolition, on the passing of any general measure. We observe, that already Parliament has been pressed with new bills for establishing other courts of request, and probably a general measure, such as that adverted to, would be preferable to a multitude of petty courts.

We have heard, amongst other plans, that a *New Circuit Court* is talked of for the trial of debts not exceeding 20*l.*; the proceedings to originate and be conducted in the Superior Courts as in cases now decided on writs of trial; and the judges at convenient intervals to make their circuits for the trial of these causes. This would certainly be an improvement upon the unsatisfactory system of the present County Courts and Courts of Request. The main objects are to secure competent and impartial judges, and uniformity of decision and practice. These can only be effected by the controul of the Superior Courts.

REMOVAL OF THE COURTS FROM WESTMINSTER.

WE understand that Sir Thomas Wilde will move, at the earliest opportunity, for a committee of the House of Commons, to continue the inquiry into the expediency of

removing the Courts from Palace Yard to the vicinity of the Inns of Court, and that the evidence taken last session may be laid before the committee.

We presume that no objection whatever will be made to granting a committee. The case, as presented to the House last session, was much strengthened by the evidence adduced. Our readers will recollect that the witnesses examined consisted of five Judges, five masters and registrars, four barristers, nine solicitors, and several ushers of the different Courts. An eminent architect and a surveyor were also examined.

If there be any likelihood of delay in completing the inquiry, we would suggest that the former evidence should be published at once. The House, we presume, would give power to the committee to this effect. We are persuaded that a summary of the evidence would go a great way towards removing doubts and objections.

We would recommend also, that the inquiry should be confined to the question of the expediency of removing the Courts, without attempting to fix on any precise site. We hear of local objections to all the sites that have been named, and arguments in favor of others. The great object is to bring the Courts to the neighbourhood of Chancery Lane:—whether they should be built on Lincoln's Inn Fields, or the Rolls Estate, or between Carey Street and the Strand, is a point (however important) that may well be deferred till the question of removal has been decided. When the bill for carrying the measure into effect has been brought in, the committee on the bill will be the proper tribunal to hear all parties. It only embarrasses the measure to introduce that question in its present stage.

JUDGMENTS, SO FAR AS THEY AFFECT REAL PROPERTY.

REFERRING to the former articles on this subject, we now resume it.

The 19th section of the act 1 & 2 Vict. c. 110, enacts that no judgment, decree, order, or rule, shall, *by virtue of that act*, affect purchasers, mortgagees, or creditors, unless and until a memorandum or minute, containing the name and the usual or last known place of abode, and the title, trade, or profession of the person whose estate is intended to be affected thereby, and the Court and the title of the cause or matter in which such judgment, decree, order, or rule shall have been obtained or

made, and the date of such judgment, decree, order, or rule, and the account of the debt, damages, costs, or monies thereby recovered or ordered to be paid, shall be left with the senior Master of the Common Pleas at Westminster, who shall forthwith enter the same particulars in a book in alphabetical order, by the name of the person whose estate is intended to be affected by such judgment, &c., and such officer shall be entitled for any such entry to the sum of 5s.; and all persons shall be at liberty to search the same book on payment of the sum of 1s. The 3d section of the 2 & 3 Vict. c. 11, makes it further requisite that the year and the day of the month, when the memorandum is left, shall also be inserted in the book.

The judgment creditor has here placed before him the steps he must take before he can entitle himself to the additional remedies given by the new act against purchasers, mortgagees, and other creditors. Nothing more is required of him than that he shall leave the proper memorandum with the senior Master, and pay the fee. It is not made incumbent on him to see that the officer does in fact make the entry, and the judgment security can in no degree be prejudiced by the officer's neglect. Purchasers who may suffer from the neglect of the officer to make the entry required by the act will have a remedy against him by an action on the case, similar to that which, previously to the passing of the act, they might have had for an omission to docket a judgment. *Douglas v. Yallop*, 2 Burr. 722.

A very important question arose upon these provisions, which has since been set at rest by a statute to which we shall presently advert. It was most probably intended to give purchasers, mortgagees, and creditors a complete protection against judgments not registered in the way pointed out by the 19th section; but there seemed no greater difficulty in letting in the old equitable doctrine of notice, as an exception to this rule, than there was formerly under the statute of Wm. & Mary. The words of this last mentioned act are equally strong. It provided that no undocketed judgment should affect lands as to purchasers and mortgagees; yet it was held by Lord Eldon, in *Davis v. Earl of Strathmore*, 16 Ves. 419, that, notwithstanding these words, an undocketed judgment did affect a purchaser in equity, if he had notice of it when he made his purchase, by analogy to the decisions under the register acts. The corresponding section in the new act contains no express exclusion of the equity in question; but by

the statute of the 3 & 4 Vict. c. 82, s. 2, after reciting that doubts had been entertained whether a purchaser, mortgagee, or creditor having notice of any such judgment, decree, order, or rule as in the prior act mentioned, would not in equity be affected thereby, notwithstanding such a memorandum or minute of the same, as in the said act is mentioned, might not have been left with the senior Master of the Court of Common Pleas, it is enacted that no purchasers, mortgagees, or creditors shall *by virtue of the recited act* be affected by any judgment, decree, order, or rule, notwithstanding any notice thereof, until a memorandum, as in that act mentioned, shall have been left with the senior Master of the said Court of Common Pleas at Westminster.

The effect of this statute upon purchasers with notice, we shall consider in connection with the closing of the old dockets by the statute next referred to.

It will be observed that the 19th section provided that judgments should not *by virtue of that act* affect purchasers, unless the foregoing directions as to registration were complied with; but it did not take away from the judgment creditor any of those powers and rights which he possessed under the old law by docketing his judgment: it did not, in short, close the old dockets, though such, probably, was the intention. But by the 1st section of the 2 & 3 Vict. c. 11, provision is made for the immediate and final close of these dockets, without prejudice to judgments already docketed and entered; and the 2d section enacts that no judgment docketed under the act of William & Mary, shall, after the 1st of August, 1841, affect purchasers, mortgagees, or creditors, until such memorandum thereof as is prescribed by the act of the 1 & 2 Vict. c. 110, shall be left with the registering officer. The new registry is now, therefore, effectually substituted in the place of the old dockets; but it would appear that by neglecting to provide against the effect of notice, a material portion of the old law is left unaffected. Those provisions, without doubt, have succeeded in putting an end to the old dockets; but it must be remembered, that the judgment creditor, by fixing a purchaser with notice, could render the lien in equity as effectual against him as if he had observed the requisitions of the Docket Act; and there seems nothing in the new acts to deprive the creditor of the like privilege now. It is true, he cannot avail himself of the more extensive remedies given by these acts,

unless he leaves the proper memorandum of his judgment with the registering officer, because the act of the 3 & 4 Vict. c. 82, makes notice so far immaterial; but the enactment is not general, but only that no judgment shall, *by virtue of the act of the 1 & 2 Vict.*, affect purchasers, &c. It seems, therefore, clear that the same principle on which it has been held that the omission to docket a judgment was an immaterial fact against a purchaser with notice, must, as regards the creditor's *old remedies*, be applied to those sections in the new act which provide a substitute for the docket; and it is conceived, that to the same extent to which the judgment creditor was, under the Statute of Westminster, entitled to attach the land, he can still do so in the hands of a purchaser *with notice*, although none of the required steps had been taken for having the judgment registered.

The local register acts are not affected by the recent statutes, and consequently, with reference to property lying in a register county, it will be still necessary to bear in mind the consequences of omitting to enter judgments at the respective county register offices.

The Registry Act for Middlesex provides that no judgment shall bind any lands in that county until it has been registered in the local office; but in the case of lands lying in any of the other register counties, it will be necessary for a purchaser to search in the Common Pleas Office, for at least such period as by the respective local acts is allowed to elapse between the entering up of the judgment and such local registration; for otherwise a judgment, the existence of which would not be disclosed by a search in the register county, would, from being afterwards registered in that county within the period required by the particular Act, have relation to the time that it was registered in the Common Pleas; and so prevail against the purchaser.

Notwithstanding the lands may lie in a register county, it is by no means clear that the search in the Common Pleas can in any case be safely dispensed with, unless the purchaser search the local office for the full period of twenty years, as he ought to have done under the old law; for as the provisions for the re-registry of judgments under the act which will be presently adverted to, are in terms confined to the Common Pleas, it may be concluded that a creditor who has duly registered his judgment in that office has done all that is requisite for keeping alive his charge as against third

parties; and consequently, that a purchaser might be bound by such judgment, although unnotified in the local register for any period short of the preceding twenty years. And as no judgment can affect a purchaser until it has been duly left with the senior Master of the Common Pleas, it is obvious that a search in the local register may be rendered unnecessary by the purchaser searching the Common Pleas Office for the proper period.

The 20th section provides for the framing of new writs by the Courts out of which the same shall be respectively sued; and under this provision several orders and forms of writs have been issued for giving effect to the act. It is, however, to be borne in mind, that, as against purchasers and mortgagees without notice, such new writs can have no further force or effect than the old writs under the Statute of Westminster.

The 21st section extends the provisions of the act to the Courts Palatine of Lancaster and Durham, and gives to judgments of these Courts the same effect, within the limits of their jurisdiction, as the judgments of the Superior Courts at Westminster, but provides that no judgment of either of the Courts Palatine shall by virtue of the act affect any lands, &c. as to purchasers, mortgagees, and creditors, until registered therein in the mode there prescribed.

These provisions, with respect to registration in the Courts Palatine, very closely resemble those contained in the 19th section for the registration of judgments of the Superior Courts.

Judgments of certain inferior Courts of Record, and rules or orders of such Courts for the payment of any sum of money, or any costs, charges, or expenses, may, by the 22d section, be removed into any of the Superior Courts at Westminster, or into the Court of Common Pleas of Lancaster, if the inferior Court be within the county, and immediately thereupon, such inferior judgments, orders, or rules, shall be of the same force, charge, and effect as a judgment recovered in, or a rule or order made by, such Superior Court. But it is provided that no such judgment, rule, or order, when so removed, shall affect purchasers, mortgagees, or creditors, any further than the same would have done if the same had remained a judgment, rule, or order of such inferior Court, until a writ of execution thereon shall be actually put into the hands of the sheriff or other officer appointed to execute the same.

The provisions of the 1 & 2 Vict. c. 110, for registry, are not made expressly applicable to inferior judgments when removed, but inasmuch as they can have only the same force, charge, and effect, as judgments recovered in the Superior Courts, all inferior judgments, must, on being removed, be registered in like manner as judgments originally recovered in the Courts into which they are removed.

The proper construction, indeed, seems to be to consider them in all respects as the judgments of the Superior Courts into which they are removed, subject, however, to the proviso at the end of the section; and if they are to be so regarded with respect to this act, they must also be held to be within the provisions of the subsequent act of the 2 & 3 Vict. c. 11, by the 5th section of which, it will be remembered, a most important protection is given to purchasers against judgments of which they had no notice.

An important question to purchasers, and especially to those who have no outstanding term, or other means of protection from incumbrances, to rely upon, is, for how long a period a judgment, from the time of its being entered up, continues an effectual lien upon the property. Previous to the late act, searches were frequently carried back for the preceding twenty years. But the necessary period for searching is now greatly shortened; for by the 4th section of the 2 & 3 Vict. c. 11, it is enacted, that all judgments, &c. registered, or hereafter to be registered under the act of the 1 & 2 Vict. shall, after the expiration of five years from the date of the entry thereof, be null and void against purchasers, mortgagees, or creditors, unless a like memorandum or minute as was required in the first instance, is again left with the senior Master of the Court of Common Pleas, within five years before the execution of the deed or instrument transferring the legal or equitable estate or interest, to any such purchaser or mortgagee for valuable consideration; or as to creditors, within five years before the right of such creditors accrued, and so *toties quoties* at the expiration of every succeeding five years, and the senior Master shall forthwith re-enter the same, in like manner as the same was originally entered, and such officer shall be entitled for any such re-entry, to the sum of one shilling.

The following example may perhaps, elucidate the effect of this section. Suppose A. to have purchased an estate twenty years

previously to the sale to *D.*, whom we will imagine to be the present purchaser, and after a lapse of ten years, to have conveyed it to *B.*, who, after a further lapse of five years, conveyed it to *C.*, the present vendor; here it would have been necessary, under the old law, for *D.* to have searched for judgments from the commencement of the twenty years, in the name of *A.*, until the date of his conveyance to *B.*, in the name of *B.*, until the date of his conveyance to *C.*; and in the name of *C.* to the time of search. But supposing a similar case to occur under the new law, it will be necessary to search in the names of *A.*, *B.*, and *C.*, for only five years previously to the conveyance to *D.*, and this search will be necessary as against *A.* and *B.* Although more than five years will have elapsed since they respectively parted with the estate; because judgments originally entered up against them, previous to their respective alienations, may, after such alienations have been revived by re-registration under the new act, and by that means, be subsisting liens upon the estate with respect to all parties.

It is obvious that this section leaves the doctrine of notice untouched, in precisely the same way as the act to which it is supplementary. The observations we have already made on the subject, in commenting upon the new provisions for registering judgments may be repeated here; but it may be questioned whether the act which was passed to exclude the equitable doctrine of notice in the construction of those provisions, prevents its application to the section we are now considering. As all reference to the intermediate statute is omitted in this act, it may be contended that although a judgment creditor who has neglected altogether to leave a memorandum of his judgment with the registering officer, will not be able to use his new remedies against purchasers on the ground of notice, yet one who has once left the memorandum, but has neglected, at the expiration of five years again to leave it, will be allowed to avoid the consequences of this neglect by proving notice. It cannot be supposed, that this result was ever intended, and it may be fairly answered that a judgment which has not been registered for five years must be regarded with respect to third persons to all intents and purposes as if it had never been registered.

A court, would in all probability, put a liberal interpretation upon this remedial act and give it an extended operation; but until

it has been decided, to relate as well to the provisions for re-registry in the intermediate statute, as to the provisions for registry in the 1 & 2 Vic. c. 110, it will be unsafe for purchasers to disregard judgments once registered, of which, by themselves or their agents, they have actual notice.

It is to be borne in mind that these provisions in the new acts on the subject of registration have a particular object in view, and will not affect any judgment as between the principal debtor and creditor, and their representatives. If the proposed entries have been made, the creditor by judgment cannot be deprived of those rights and priorities which the law allows to a debt of that nature against third parties. If this has been neglected the creditor will lose his lien, so far as those parties are concerned; but in the former case, as against purchasers without notice, he has only his old remedies, and in the latter he will be allowed his remedies against purchasers with notice, so far as the equitable doctrine is not affected by the 3rd & 4th Vic. c. 82.

However, as between the principal debtor and creditor, or their representatives or volunteers, the only enquiry will be, whether the judgments have been entered up within the period named in the Statute of Limitations, i. e. twenty years, or, if not, whether they have been kept alive by any payment or written acknowledgment on the part of the debtor within that period.

It will, therefore, be evident that all the requisitions of the 4th section of the 2 & 3 Vic. c. 11, may have been satisfied, and yet that lapse of time, with no intermediate acknowledgment, may have determined the judgment with reference to all parties.

NEW BILLS IN PARLIAMENT.

MUNICIPAL CORPORATIONS.

This is a bill to explain and amend an act of the 5 & 6 W. 4, c. 76, for the Regulation of Municipal Corporations in England and Wales.

By the 5 & 6 W. 4, c. 76, s. 28, it is enacted, that no person shall be qualified to be elected, or to be a councillor, or an alderman of any borough during such time as he shall have, directly or indirectly, by himself or his partner, any share or interest in any contract or employment with, by, or on behalf of the council of such borough: and doubts have arisen as to the extent and meaning of the word "contract" and it is expedient that such doubts should be removed: It is therefore proposed to be enacted,

1. That the word "contract" in the said

enactment shall not extend or be construed to extend to any *lease, sale, or purchase* of any lands, tenements, or hereditaments, or to any agreement for any such lease, sale or purchase, or for the loan of money, or to any security for the payment of money only.

2. That any person against whom any original writ, suit, action, bill, plaint or information shall have been sued out, commenced, or prosecuted, on or before the day of the passing of this act, for the recovery of any pecuniary penalty or penalties incurred under the said enactment (by reason of any extension or construction of the word "contract" therein contained, beyond or different from what is herein enacted), may apply to the court in which such original writ, suit, &c., shall have been sued out, commenced or prosecuted, if such court shall be sitting, or if such court shall not be sitting, to any judge of either of the Superior Courts of Westminster, for an order that such writ, &c., shall be discontinued, upon payment of the costs thereof out of pocket incurred to the time of such application being made, such costs to be taxed according to the practice of such court; and every such court or judge is hereby authorized and required upon such application, and proof that sufficient notice has been given to the plaintiff or plaintiffs, or to his or their attorney, of the application, to make such order as aforesaid; and upon the making such order and payment, or tender of such costs as aforesaid, such writ, &c., shall be forthwith discontinued.

3. Judges empowered to order suits commenced before the 8th February 1842, to be discontinued upon payment of costs.

4. Judges may order suits commenced subsequent to the 8th February 1842, to be discontinued without payment of costs.

5. Act not to extend to actions when judgment passed before passing of the act.

6. Councillors, &c. not to be disqualified on account of having an interest in any lease of lands, &c.

NOTICES OF NEW BOOKS.

Outlines of the Law of Real Property, or Readings from Blackstone and other Text writers, including the alterations to the present time. By Robert Maugham, Secretary to the Incorporated Law Society of the United Kingdom.

Mr. Maugham has just published the second part, which concludes the volume of his *Outlines of the Law of Real Property*, and we think he is entitled to state in our pages his claims to professional favour. It appears from the following preface to the volume, that he has now completed the series. We recommend the statement of his plan to the attentive perusal of those whom it may concern.

"In closing this volume of *OUTLINES of LAW*, I beg permission to address a few words to my professional brethren.

"Soon after the commencement of the examination of candidates for admission on the roll of attorneys and solicitors, (now six years ago), I had frequent opportunities of knowing that a *short course of reading* was needed for those who had little leisure for study, and perhaps not much inclination; yet were bound to prepare for the ordeal through which they must pass. Aware that the practitioner, engaged throughout the day in active business, and often occupied in the silent watches of the night in preparing for the morrow, could rarely superintend the studies of his pupil, I considered how best the duty of the instructor and the labour of the learner might be facilitated.

"Without entering the field of rivalry amongst writers who have applied their minds to the minute and elaborate exposition of large and important branches of the law, it appeared to me that I might, without presumption, undertake the task of supplying a *general outline* of the principal departments, indicated by the course taken in the examination, into *Common Law,—Conveyancing,—Equity,—Bankruptcy, and Criminal Law.*

"The duties of a compiler of this humble order, seemed to demand only that he should be well acquainted with the wants of his readers, and spare no pains in collecting and arranging his materials.

"Accordingly, I have submitted to the profession a short series of volumes, intended as the *First Books* for the law student, compiled from the works of Blackstone and other text writers,—omitting the obsolete or repealed parts of the law, and incorporating all the recent statutes and decisions, down to the time of publication.

"The volumes thus compiled, are,—

I. *Outlines of Law*, comprising all the various Injuries to Persons and Property, and their remedies in the several Courts. Part 1: *Common and Statute Law.* Part 2: *Equity and Bankruptcy.*

II. *Outlines of the Law of Real Property.* Part 1: *Corporeal and incorporeal hereditaments; Tenures; Estates; Uses and Trusts.* Part 2: *Title by descent and purchase, and the several modes of conveyance.*

III. *Outlines of Criminal Law.*

IV. *Outlines of the Jurisdiction of all the Courts, Civil and Criminal.*

V. *A Digest of Questions.* Part 1: *The Examination Questions in Common Law, Conveyancing, Equity, Bankruptcy, and Criminal Law.* Part 2. *A collection of Questions, founded as well on Blackstone's Commentaries and other text books, as on recent statutes and decisions.* To this volume the others serve as a key.

"In executing this design, it was manifest, that so far as the commentaries of Mr. Justice Blackstone contained an exposition of the *existing law*, it was impossible to follow a better

guide, either for clearness of statement, or elegance of diction. To that 'time-honoured' work, I have, therefore, freely resorted,—treasuring up not only all such parts as continue unchanged at the present day, but so much of the history of the *past* as sheds a useful light on the *present*.

"Whilst the masterly sketch of the law relating to 'private wrongs,' contained in the third volume of the Commentaries, stands altogether unrivalled, (except in its obsolete description of almost all real actions,) it must be admitted, that the student will seek in vain for any adequate statement of the relief and protection afforded in the Courts of Equity, extending at this moment over one hundred millions of property. Nine-tenths of the volume on Private Wrongs, are devoted to the Common Law remedies, and only one to Equity and Bankruptcy. I have therefore had recourse to other text writers, to the reports of adjudged cases, and to the recent statutes, down to the present session of parliament.

"The reader need not be reminded of the difficulty of condensing the principal points arising from the vast mass of legislative and judicial changes which have occurred since the time of Blackstone; of selecting just so much as might be properly suited to the elementary nature of the design, yet sufficient to satisfy at his outset the intelligent student. I have earnestly endeavoured to render the work useful,—to submit to the reader not only all the *alterations* in the text falling within the plan of an elementary course of reading, but to supply various important *additions* not hitherto comprehended in any edition of Blackstone."

POINTS OF LAW AND PRACTICE, BY QUESTION AND ANSWER.

TRIAL BEFORE SHERIFF.

[See p. 311, *ante*.]

1. By the 3 & 4 W. 4, c. 42, s. 17, where an action is depending in any of the Superior Courts of Law for any debt or demand in which the sum sought to be recovered and *indorsed on the writ of summons does not exceed 20l.*, the Court or a judge, upon being satisfied that the trial will not involve any *difficult question of fact or law*, may direct that the issue or issues joined shall be tried before the *sheriff* of the country where the action is brought, or any *judge of a Court of Record* for the recovery of debt in such county.
2. In case the action be properly triable before the sheriff or a judge of a Court of Record in the county where the action is brought, a summons should be taken out to shew cause why the issue should not be so tried. The original writ of summons indorsed, with the pleadings and particulars, should be produced to satisfy the judge that it is a proper case for a writ of trial.—Bagley's Practice.

3. The writ of trial applies only to cases of debt or demands sought to be recovered, and indorsed on the writ, not exceeding 20l. It cannot be granted in an action of *tort*. *Smith v. Brown*, 2 M. & W. 851.
4. Nor in an action where the damages are unliquidated. *Jacquet v. Powra*, 5 M. & W. 155. *Collis v. Groome*, 302, *ante*.
5. The defendant, as well as the plaintiff, may obtain an order for a writ of trial.—Lush's Prac.
6. By rule of Hilary Term, 4 W. 4. if the Judge of a Superior Court, before whom a cause is tried and less than 20l. recovered, shall certify on the *postea* that the cause was proper to be tried before him, and not before the sheriff or judge of an Inferior Court, the costs will be taxed according to the usual scale.
7. The writ of trial may be directed to the judge of any Court of Record in the county where the action is brought.
8. By the rule of Hilary Vacation, 1834, no fee to counsel is allowed on writs of trial, except in trials before the judge of the Sheriff's Court, London, or of other Courts of Record, where attorneys are not allowed to practise, and then one guinea only.
9. The sheriff or a judge on a writ of trial, has the same power as a judge at Nisi Prius as to nonsuits. *Watson v. Abbott*, 2 C. & M. 150; and may direct amendments in the writ of trial, and allow immediate execution or stay the same. 3 & 4 W. 4, c. 42, s. 18.
10. On trials before the sheriff or a judge, under the Law Amendment Act, the verdict is indorsed on the writ of trial, and the same course of proceeding is taken as after trials at Nisi Prius or the assizes.
11. When a trial has been had before a sheriff or local judge in term time, the application for a new trial should be made within four days after the return of the writ of trial. *Wheeler v. Whitmore*, 4 Dowl. 235. If tried in vacation, the application must be made within the first four days of the ensuing term. If the motion be made on an objection to the pleadings, there is no occasion for an affidavit, but in order to refer to the evidence, or any proceeding at the trial, the sheriff's notes must be verified. Bagley's Practice, 425.
12. On a trial before the sheriff, where the plaintiff's claim is under 5l., the Court will not grant a new trial, on the ground that the verdict is against evidence. *Lyddon v. Coombes*, 5 Dowl. 560.

BARRISTERS CALLED.

Hilary Term, 1842.

LINCOLN'S INN.

26th January.

William Forbes.
James Dott Hulton.
Henry Robert Goldfinch.
Charles Maurice Roupell.

Peroval Hartley.
William Curteis Whelan.
Regnier Winckley Moore.

28th January.

John Eardley Earleley Wilmot.
John Crenzé Hingeston Ogier.
Thomas Gregory Foster.
William Henry Roberts.
William Meybohm Rider Haggard.
Charles Edward Thornhill.
Thomas Gunner.
Robert Lowe.

INNER TEMPLE.

January 28th.

Thomas John Mazzinghi.
Thomas Montague Carrington Wilde.
Charles Robert Claude Wilde.
William Hughes Hughes.
John Spencer Phillips.

MIDDLE TEMPLE.

14th January.

William Tobias Langdon.

28th January.

John Smith Mansfield.
William Dickenson.
William Good.
Richard Potter.
Charles Bird.
William Donnelly.
George Garcia.
Frederick Thomas Fowke.
Gustavus Woolaston Fowke.
James Logan.
Richard Clarke.
Rathbone Bartlett Roberts.
Thomas Alexander Greene.
James Ludgater.
Cotsford Burdon.

GRAY'S INN.

26th January.

Samuel John Partridge.

29th January.

Cremutius Cordus Calder.

SUPERIOR COURTS.

Lord Chancellor.

CORPORATION CHARITIES.—APPOINTMENT OF NEW TRUSTEES.

The trustees of charities that were vested in the bodies corporate in boroughs before the act 5 & 6 W. 4, for regulating municipal corporations, are entitled to service of a petition for the appointment of new trustees, and their clerk, where such trustees have a clerk, is the proper person to be served.

This was a petition for a reference to the master for the appointment of new trustees of charities in the city of Gloucester, which were vested in the body corporate before the passing of the act of W. 4, for regulating municipal corporations.

Mr. Richards, on behalf of the actual trustees, objected to the hearing of the petition, as it was not served on his clients. It was not required that the petition should be served on each of the trustees, but they had a clerk, and service on him would be accepted as service on all. They had the legal estate in them, and ought to have notice of the appointment of new trustees. It was the practice of Lord Cottenham to direct notice in these cases to be given to the town clerk.

Mr. Girdlestone for the petitioners, insisted that the town clerk had no connection with these charities, which were, on the contrary, to be kept distinct from the borough fund, with which he was connected. It would be an improper waste of the charity to serve all the trustees individually with the petition, and they had no recognised common officer.

The Lord Chancellor could not certainly see any reason for serving the town clerk, but it appeared to him that the actual trustees ought to have notice of the reference for the appointment of new trustees. In this case, the trustees had a clerk, and service of the petition on him would be sufficient. It would be time enough to consider how the service should be effected in those cases in which the trustees should not have any officer.

In re the Gloucester Charities, at Lincoln's Inn, Feb. 9, 1842.

Vice Chancellor of England.

VENDOR AND PURCHASER.—PAYMENT OF MONEY INTO COURT.—FEME COVERT.

Where a decree is taken by consent for the sale of an estate, and it afterwards appears that two married women, who were parties to the cause, had joined in the consent without having answered separately or apart from their husbands, the purchaser can object to the validity of the decree, on a motion to have the purchase money brought into Court.

The production of probate is sufficient evidence of the proof of a will to pass copyholds.

Simpson stated that the object of the motion was to have a sum of money paid into Court, being the residue of the purchase money for the copyhold premises in the pleadings mentioned. The objection made, was that the decree which established the will in the pleadings mentioned, and ordered the sale, was erroneous, on the ground of the same having been obtained with the consent of two parties, who were married women, without their having been examined separately, or put in separate answers; but the property being copyhold, he submitted, there was no necessity for the will being established, and it was determined in *Bennett v. Hammill*, 2 Sch. & Lef. 576, that a purchaser under a decree is protected against the claims of third parties, of which he had no notice at the time of completing his purchase.

Chundless, contra, said there were two ques-

tions, the first of which was whether the decree was irregular; and the second, whether if it were irregular, a purchaser might not be affected who completed his purchase under it. Previous to the establishment of a will, the heir at law or customary heir might have an issue, and the Court was very careful to prevent their rights from being injured. The decree in this case recites that it was made upon reading the original will, and yet the only proof is, that a paper, purporting to be a will, was brought from Doctor's Commons for the admission of the two defendants, who were married women, amounted to nothing. He cited *Lechmere v. Brazeir*, 2 J. & W. 287.

Simon, as *amicus curiæ*, mentioned a case of *Day v. Archer*, in which his Honor recently held that production of the probate was sufficient evidence of a will relating to copyholds.

The Vice Chancellor said, that if the probate had been produced, the property being copyhold, that would have been sufficient; but the only evidence was an admission by two married women that a certain will was made, and a document produced from Doctor's Commons. The motion must therefore be refused.

Taylor v. Murtindale, January 20th, 1842.

FEME COVERT.—DOMICILE.

If husband and wife be domiciled in Scotland, and the wife be possessed of choses in action in England, the husband's representatives will, on his death, leaving her surviving, become entitled to them, although all the transactions connected with them may have taken place in England.

This was a suit instituted for the purpose of recovering possession of certain funds, the produce of property that had been in settlement, and which it was admitted, belonged to the wife, but had not been realized during the husband's life, who pre-deceased his wife, and the question was, whether the wife, or his representatives were entitled. It appeared, that previous to her marriage, the wife resided in England, and the settlement between her and her husband was executed at Durham, near to which place the property which had given rise to the dispute was situate.

It was also admitted, that according to the law of Scotland, which differed from the law of England in that respect, a wife's choses in action, though not reduced into possession, became the property of the husband.

Richards and *Shadwell*, for the plaintiffs, said, that if the domicile of the husband were not disputed, the claim of his representatives must be recognized in the same manner as if the question were being discussed in Scotland, and that the circumstance of the property being situated in England was of no consequence.

Koe and *Wright*, *contrà*, said that no doubt if the deed were executed in Scotland it would be construed according to the Scotch law; but here the whole transaction took place in England, and it was evident the parties contracted and intended to contract according to the law of England. It was true they afterwards be-

came domiciled in Scotland, but at the time of the contract, the wife, whose property it was, resided in England.

The Vice Chancellor said, that if there were any doubt of the effect of the law of Scotland with reference to the subject, he would direct an enquiry to the master to ascertain it, but if that were admitted he must determine the husband's representatives to be entitled; and the counsel for the defendants having declined a reference, his Honor decided accordingly.

Smith v. Mackie, February 19, 1842.

Vice Chancellor Wigram.

EQUITABLE ASSIGNMENT.—POLICY OF INSURANCE.—SUICIDE.

Where an assured deposited a policy with his creditor, accompanied by a memorandum stating that he "would leave it in his hands as a collateral security, and that he would assign the same at his expense," and it appeared that the policy expressly provided for the case of an assignment: Held, that this was an equitable assignment sufficient to charge the defendants to the extent of the assignee's interest, without any formally executed deed, and was within the condition of the policy.

In May 1838, one Bowtell being indebted to the plaintiff, the former, through the agency of the latter, effected a policy with the defendants, the Britannia Insurance Company, for 700*l.*, upon his life. By the third condition of such policy, it was provided, that if the assured should commit suicide, and the policy should have been assigned to any person or persons, having a *bona fide* interest in his life to the extent of the sum assured, the full amount would be paid to the party so interested; but, that if the interest were less than the sum assured, the party would be indemnified to the full extent of the interest." It was alleged that at this time, Bowtell was indebted to the plaintiff in the sum of 268*l.*, but had afterwards paid off this debt. Since then, however, he had become liable upon five bills of exchange amounting to 389*l.* On the 20th of July, 1838, Bowtell delivered to the plaintiff the following memorandum, together with the policy, "I will leave in your hands the policy on my life, effected by you in the Britannia, for collaterally securing to you the payment of 260*l.*, due and owing from me, and any other sum hereafter due to you from me upon bills of exchange, and I will assign the same at my expense." One premium of 22*l.* had been paid. In the month of February following, Bowtell committed suicide. A bill was now filed against the office, praying that an account might be taken of the debt.

Mr. S. Sharpe, and Mr. Shapter, for the plaintiff.

Mr. Lloyd and Mr. Bacon, for the defendants, contended that the plaintiff had not brought himself within the language of the condition, inasmuch as there had been no assignment.

V. C. Wigram.—The question is, supposing there was a debt *bona fide* due from Bowtell to Cook, whether the Company is liable? The effect of the memorandum was to give to the plaintiff a right to enforce the payment of his demand out of the money due on the policy. In the event of the natural death of Bowtell, the assignee would have been entitled to be paid his debt out of the money coming to the estate. The effect of what took place was to give the plaintiff all that a formal assignment could give him, and the letter between the parties agreeing that he should have the benefit of it, by giving to the plaintiff that right, does, in fact, assign to him, as between the debtor and creditor, the benefit of it. Then, was this such an assignment as the third condition of the policy contemplated? The obvious meaning of the condition is, that the assured should have the power to negotiate the policy as a security, which, by the insertion of the condition, became more valuable. The obvious and rational interpretation of this condition, is, that it had reference to an equitable assignment. I cannot read it as a stipulation that an assignment in a given form should be executed. I consider the word "assignment," in the condition, and the word "assignment" in the memorandum, precisely in the same way.

Cook v. Black and others. Lincoln's Inn, February 10th, 1842.

Queen's Bench.

[Before the four Judges.]

PRACTICE.

The Court will not, after a special verdict has been argued and decided, permit the case to be reheard on any additional statement of facts.

Lord Denman, C. J.—An application was made to the Court the other day under these circumstances. It was stated that both the parties had agreed on the facts which were to be drawn up in the form of a special verdict. Some dispute, however, arising as to this matter, the parties came before me, but nothing material was done; the case was set down for argument, and we gave judgment for the defendant. The present application is for a new trial, for the purpose of enabling the parties to put additional facts upon the record, or for the Court to introduce them, and then reconsider the case. This latter part of the application is justified, on the ground that the facts stated are such as to shew that what is wished to be inserted in the case is something which must or at least may be inferred. If this application was founded on the fraudulent conduct of the other party, or if the applicant had been misled by anything which had been done by the Court, either at *nisi* or in banc, we should not be deterred by the want of any specific case, as a precedent for doing what we are asked to do. But the application does not rest on that ground. We gave our judgment on the facts as they were laid before us;

both parties having at the time agreed to the statement of the facts on which our judgment was asked. In the course of that judgment we used the expression that the parties were bound by the facts as stated. On that sentence alone, which was not necessary for the purposes of our judgment, the plaintiff founds the present application. The answer to it is, that if he is entitled, on the facts, he may correct our judgment by carrying it to a Court of Error; but if there are any facts which he now deems it necessary for him to have stated; we can only say that they should have been stated in the first instance, or should have been laid before the jury, and thus introduced to the notice of the Court. This the plaintiff might have done, and this he has not done. This is the whole case—one of the parties agreed to a statement of facts, in the form of a special verdict, for the purpose of taking our judgment. He has found that judgment against him, but he thinks it might be in his favour if he could add more facts to those submitted for our consideration. There is probably no case in which the unsuccessful party has not entertained such an opinion. We could not make this rule absolute without inviting constant attempts thus to unravel our decisions.

Rule discharged. — *Sanders v. Vanzeller*, H. T. 1842. Q. B. F. J.

Queen's Bench Nisi Prius Court.

INDICTMENT.

In an indictment charging the defendant with indecent exposure of his person with intent &c., the Court refused to compel the prosecutor to declare, in the first instance, what were the acts intended to be relied on as constituting the substantive offence, and what were merely to be proved as evidence of intent.

Recognizances on a certiorari should bind the defendant to receive judgment on the day of the trial, if it is intended to move for judgment in that way.

Indictment for an indecent exposure of the person with intent &c. The indictment contained three counts alleging various acts of indecent exposure.

Mr. Chambers for the defendant, applied to the Court to call on the prosecutor to declare on which of these acts he intended to proceed, as that which constituted the substantive offence charged in the indictment, and which were intended to be given in evidence for the purpose of proving the intent.

Lord Denman, C. J., refused to compel the prosecutor to make the required declaration.

The evidence was given, and the jury returned a verdict of Guilty.

Application was then made to the Court to pronounce judgment. The defendant was called, but did not appear.

Lord Denman asked whether the recognizances bound the defendant to appear and receive judgment.

The answer was in the negative.

Lord Denman said, that when it was intended to move for judgment at the end of the trial, the notice of that intention ought to be expressed on the face of the recognizances.

The Queen v. Albert, H. T. 1842. Q. B. N. P.

Queen's Bench Practice Court.

MISDESCRIPTION.—VARIANCE.—EXECUTOR.
—PROCESS.—DECLARATION.

It is not a variance between the declaration and process, that in the former the plaintiff is described "executor," but not suing "as executor," and in the latter, generally, without any allusion to his representative capacity.

In this case the plaintiff sued out a writ of summons, and in it described himself "executor," but not as suing "as executor." In the declaration, he gave no description of himself, but declared generally.

Simon obtained a rule nisi to set aside this declaration, on the ground that there was a variance between it and the writ of summons.

Willes shewed cause against the rule, and contended that the introduction of the word "executor" into the writ, was not more than if the word "carpenter," or the name of any other business had been introduced. It did not describe the plaintiff as suing in a representative character, and therefore there was no variance between the process and the declaration. The present rule ought, therefore, to be discharged.

Simon, in support of the rule, contended that the plaintiff, by introducing the word "executor" into the process, deceived the defendant, and led him to suppose that the action was in a representative character. This might induce the defendant to make a defence to an action, which otherwise would be undefended. He was thus compelled to incur an amount of costs unnecessarily. If, therefore, the Court should be of opinion that the rule ought to be discharged, it should be discharged without costs.

Cur. adv. vult.

Williams, J., thought that the introduction of the word "executor" into the process could only be considered as a description of the person suing, and not of the character in which he sued. It was, therefore, no variance for the declaration to describe him generally. There was an anonymous case in 1 Dowling's Practice Cases, 97, where a similar decision was pronounced by Mr. Justice Patteson. The rule must, therefore, be discharged, but under the circumstances, without costs.

Rule discharged, without costs.—*Free, executor of Free*, v. *White*, H. T. 1842. Q. B. P. C.

SERVICE OF RULE TO COMPUTE. — RULE ABSOLUTE.

It is not a sufficient service of a rule to compute on a publican that it has been left with "a person in the bar."

In this case, which was an action on a bill of exchange, judgment by default having been suffered, a rule to compute was obtained,

Miller now moved to make that rule absolute. The affidavit of service on which he applied, stated that the defendant was a publican, and the rule nisi was served on a person in the bar. The question was, whether this was a sufficient service of the rule.

Williams, J., was of opinion that it was not. Nothing shewed any privity between the defendant and the person on whom the service was affected in the bar.

Rule refused.—*Monroe v. Reader*, H. T. 1842. Q. B. P. C.

Common Pleas.

PROMISSORY NOTE.—FORM OF ACTION.—
DEBT.

In an action on a joint and several promissory note against one defendant, the plea alleged that the defendant had made the note together with one G. W., and as security for him to the plaintiff for the amount thereof, and without consideration: Held, upon demurrer to the replication, putting in issue the fact of consideration, that the action was well conceived in debt.

This was an action of debt brought against the makers of a joint and several promissory note, for 15*l*. The defendant pleaded that the note was made by him and one George Watt, but that neither before nor at the time of making the said note, was the defendant liable to the plaintiff for the said sum of 15*l*.; that the note was signed by the defendant at the request of Watt, and as a security to the plaintiff for 15*l*. which was the debt of Watt; and that the defendant had no value or consideration for the said note. Replication, that there was value and consideration given for the note, to wit, the amount of the note. Demurrer.

Mr. Serjt. *Stephen* in support of the demurrer, argued that the real question was, whether debt would lie against a person in the situation of the defendant, as disclosed in the plea. Assumpsit undoubtedly would be maintainable, but the consideration being collateral, and not direct between the plaintiff and defendant, this demurrer must prevail. The distinction was between the existence of a debt and a liability; and although in the present case there was a liability, it was the necessary ingredient of privity to render it debt. The distinction was established by *Foster v. Jolly*, 5 Tyr. 244; *Clark v. Wilson*, 3 M. & W. 208; *Abbott v. Hendricks*, 1 Man. & Gr. 791; and *Priddy v. Henbrey*, 1 B. & C. 675.

Mr. Serjt. *Storks*, in support of the replication, was stopped by the Court.

Tindal, C. J.—When this defendant gave the note to the plaintiff, he entered into a new, original, and immediate contract with the plaintiff, and that created a privity of contract between them, by which he took the debt upon himself. The case of *Evans v. Jones*, 5 M. & W. 295, has, I think, completely put an end to all ground of objection to this action.

Erskine, J., and *Maule, J.*, concurred.

Judgment for the plaintiff.—*Sison v. Kidman*, H. T. 1842. C. P.

DEMISE.—TRAVERSE.

To an action of trespass q. c. f., the defendant justified under one G. B., whose title was set out, and whose servant he was: Replication, that an agreement had been entered into with the defendant as agent of B., by which the close was demised to the plaintiff for a term yet unexpired: Rejoinder, that B. had not demised to the plaintiff: Held, upon general demurrer, that the traverse was good.

The plaintiffs declared in trespass *quare clausum fregit*: the defendant pleaded giving colour to the plaintiff, and justifying the trespass as the servant of one G. Bucknall, whose title was set out, and whose servant he was. The plaintiff replied, that an agreement in writing had been made by the defendant, as the agent of Bucknall, and with his authority, by which the close in question was demised to the plaintiff for a period yet unexpired. Rejoinder, that Bucknall did not demise the close. General demurrer.

Mr. Serjt. Channell, in support of the demurrer. The objection to the rejoinder was that it traversed a fact which was not alleged in the replication, but denied an inference of law resulting from the facts stated. He cited *Bedell v. Lall*, Yelv. 151; *Cross v. Hunt*, Carth. 99.

Tindal, C. J.—Is not the legal effect of the demise by the defendant as the agent of Bicknall, a demise by Bicknall. I think you cannot raise this objection upon general demurrer.

Channell then argued, that the traverse was too large;

[*Sed per Curiam.*] Judgment for the defendant.

Mr. Serjt. Manning was to have argued for the defendant, but was not called upon.

Wilkins v. Butcher, H. T. 1842. C. P.

MONEY HAD AND RECEIVED.

The plaintiff having purchased of the defendant his right to damages in a certain cause pending, the agreement was ratified by a deed of assignment; the defendant was sent by the plaintiff to receive the amount of the verdict and costs, and retained it: Held, that the money was recoverable in an action of assumpsit for money had and received.

This was an action of assumpsit for money had and received. At the trial, it appeared that the defendant Jones had been plaintiff in a suit pending against one Railston Brown, which had been referred to arbitration, and that the present plaintiff being acquainted with the defendant agreed to purchase of him his chance of an award in his favor, for 110*l.* A deed of assignment was executed, by which this agreement was ratified, and the plaintiff was appointed the attorney of the defendant, to receive and sue for the sum to be awarded by the arbitrator. The award being made, the plaintiff took it up, paying to the arbitrator the sum of 116*l.* costs; but upon opening it, it

was discovered that a sum of 31*l.* only was awarded to the defendant, the costs of the reference being directed to be equally divided between the respective parties. The plaintiff sent the defendant to Mr. Brown, to receive the damages, and his share of the costs, and received from him a cheque for 89*l.*, the amount due. This was the sum for which the action was brought; an objection was raised, that the two sums could not be recovered of the defendant in the present form of action for money had and received, but that the plaintiff should have brought covenant upon the deed of assignment. Mr. Justice Colman, however, overruled the objection, and a verdict was found for the plaintiff.

Mr. Serjeant Shree, now moved for a new trial, on the ground of misdirection, contending that the money received by the defendant was his own, and that he had a legal interest in it, although he was under an equitable liability to pay it to the plaintiff, which liability arose upon the deed.

Tindal, C. J.—The rule must be refused. It has been held since the time of Lord Mansfield, that where money is due *æquo et bono*, it may be recovered in this form of action.

Rule refused.—*Smith v. Jones*, H. T. 1842. C. P.

House of Lords.

SESSION, 1842.

CAUSES APPOINTED FOR HEARING.

Scot v. Ker.	(1st Appeal.)	Scotland
Scot v. Ker.	(3d Appeal.)	ditto
Vaughan v. Gronow.	(abated)	Chancery, England
The King v. Trafford.	(Writ of Error)	Plaintiff's Counsel heard. Queen's Bench England.

1833.

Blake v. Boyle.	(abated)	Chancery, Ireland
Attwood and another v. Small.	(1st appeal.)	
Abated.		Exchequer, England
Johnson v. Thomas, ex parte.		Scotland
Gould v. Richards	(abated)	Chancery Ireland

1836.

Small v. Attwood.		Exchequer, England
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1837 & 8.

Furnell v. McGauran, ex parte.	(abated)	Chancery, Ireland
Aitken v. Finlay and Neilson, ex parte.	(abated)	Scotland
E. Belfast v. M. of Donegall.	(abated)	Chancery Ireland

Scaulan v. Usher.	(under compromise)	Ditto
Crawford v. Edward (pauper) ex parte.		Scotland

1839.

Sir G. Sinclair, Bart. v. Viscount Maitland.	(to be heard after the cause Viscount Maitland v. Horne, etccon.)	Scotland
Andrews v. Walton,		Chancery England
Viscount Maitland v. Horne, etc con.		Scotland
Parr v. Attorney General.		Chancery England

1840.

JUDGES.—Sir F. Burdett, Bart. v. Doe on demise of Spilsbury.	(Writ of Error)	Queen's Bench, England
Skykker v. Doe, on demise of Spilsbury.	(Writ of Error)	ditto

Lord Douglas v. Duke of Argyle. Scotland
 Lord Advocate of Scotland v. Lord Douglas. ditto
 JUDGES.—Rutland v. Doe on demise of Whythe. (Writ of Error) Exchequer, England
 Carrick v. Buchanan, ex parte. (Abated)
 Dundas v. Dundas. (Abated) ditto
 JUDGES.—Sir J. Simpson v. Lord Howden. (Writ of Error) Queen's Bench, England
 Fogo v. Malthie, or Fogo (cause remitted) Scotland
 Christie v. Wight. ditto
 Napier & Co. v. Duncan, or Bruce. ditto
 JUDGES.—Roe, lessee of Lord Trimlestown v. Kemmis. (Writ of Error) Exchequer, Ireland
 Siree v. Kirwan, or Conolly. (Abated) Ireland
 Renton v. Anstruther, ex parte Scotland
 Anstruther v. Wood. ditto
 Gardner v. Scott, ex parte. ditto
 Menzies v. Barstow. ditto
 Balfour v. Malcolm, *et cetera*. ditto
 JUDGES.—Farran v. Beresford. (Writ of Error) Exchequer, Ireland
 Hamilton v. Hamilton. Scotland
 Hamilton v. Wright. ditto
 Middleton v. Baker. Chancery, England
 Charter v. Sir J. Trevelyan. ditto

1841.

The General Convention of Royal Burghs of Scotland v. Cunningham. Scotland
 Clark v. Smith. Chancery, Ireland
 Ker v. Cochran, *et cetera*. Scotland
 Baird v. Neilson. ditto
 The Edinburgh and Dalkeith Railway Company v. Wanchpole. ditto
 Farrell v. Gleeson. Exchequer, Ireland
 Gurly v. Gurly. Chancery, Ireland
 White v. Cuddon. Exchequer, England
 Sir L. Saint George Sheffington, bart v. Budd ditto
 Jones v. Waite. (Writ of Error) England
 Edinburgh and Glasgow Union Canal Company, v. Sir G. T. Carmichael, Bart. Scotland
 Sir J. H. Dalrymple, v. Ranken, ex parte. ditto
 Monkland and Kirkintilloch Railway Co. v. Dixon. ditto
 Mackersay v. Ramsay, Bouners & Co. ditto
 Macdonald v. Lord Macdonald. ditto
 Gordon v. Campbell, ex parte. ditto
 Haworth v. Bostock, ex parte. Exchequer, England
 Galwey v. Barron. Exchequer, Ireland
 Sherburne v. Middleton. Exchequer, England
 Murphy v. Couway Chancery, Ireland
 v. Gleeson. (Second appeal) Exchequer, Ireland
 Broadhurst v. Tunnickliff. Chancery, England
 Cooté v. Le Poer French, ex parte, Chancery, Ireland.
 Adam v. Farquarson. Scotland
 Mackenzie v. Girvan. ditto
 Robson v. Attorney General, ex parte. Chancery, England
 Reddie v. Todd. Scotland
 Collison v. Girling, ex parte. Chancery, England
 Gordon v. Campbell. Scotland
 Porterfield v. Corbett. ditto
 Ferguson v. E. of Kinoull. ditto

1841.

2d Session.—Thomson v. H. M. Advocate General, (Writ of Error) Exchequer, Scotland
 Callen v. Sproutt. Scotland
 Ker v. Jobson, or Dickson. ditto
 Gibson v. Rutherglen and Co. ditto
 Drake v. H. M. Attorney General. Chancery England

H. M. Attorney General v. Drake. ditto
 The Skinners' Company v. The Irish Society. ditto
 Waters v. Groom. ditto
 Rutter v. Chapman. (Writ of Error) Exchequer, England
 Earl of Rosslyn and another v. Aytoun. Scotland
 Heddle v. Baikie. ditto

1842.

Drummond v. Munro, or Ross. Scotland
 Johnstone v. Beattie. Chancery, England
 Sharpe v. Lord Panmurel. Scotland
 Fleming v. Baird. ditto
 Brown v. Annandale. ditto
 Fraser v. Nicol. ditto
 Williamson v. H. M. Advocate General. (Writ of Error) Exchequer, Scotland

PARLIAMENTARY INTELLIGENCE RELATING TO THE LAW.

House of Lords.

STANDING ORDERS RESPECTING PRIVATE BILLS.

Die Veneris, 18^o Februarii 1842.

ORDERED, by the Lords spiritual and temporal in Parliament assembled, that where any petition praying leave to bring in a Private Bill shall set forth that a petition in the same words, or the same in substance, was presented in the last Session of the last Parliament, or which shall refer to any such petition presented in the last Session of the last Parliament, and that the Judges to whom such petition was referred did make their Report thereon, or in case of any bill brought from the House of Commons and referred to the Judges and on which the Judges made their Report, the same be referred to a Committee, to examine and report whether any alteration hath taken place in the state or interest of the parties since the proceedings on the said former petition and bill were stayed by the prorogation of the last Parliament; and if the Committee shall report that no such alteration hath taken place, then that leave be given to the parties to bring in a bill, in the same words as those of the former bill so reported upon by the Judges as aforesaid, without referring the said renewed petition to two of the Judges in the usual course.

ORDERED, that if any such bill so renewed and presented shall be committed in this Session (such former bill having been also committed in the last Session of the last Parliament), the Committee appointed on such renewed bill be at liberty to proceed on the same, after a week from the day on which the same shall be ordered to be committed; and that notice affixed on the doors of this House seven days before the meeting of the said Committee shall be sufficient.

ORDERED, that where any evidence was taken in the last Session of the last Parliament

before the Committee appointed to consider such former bill, the same be referred to the Committee appointed to consider such renewed bill, and be received as evidence by such Committee; but without prejudice to the same or any other witnesses being examined, if required and necessary.

For enabling Ecclesiastical Corporations to grant Leases. The Bishop of London.

For enabling Incumbents of Benefices to grant Leases. The Bishop of London.

To amend the laws relating to Loan Societies. For improving the Law of Evidence.

[For 2d reading.] Lord Denman.

The following is the substance of Lord Denman's Bill:—

1. Witnesses not to be excluded from giving evidence by incapacity from *crime* or *interest*.
2. Baptists may make affirmations instead of swearing. 3. In legal proceedings, it shall not be necessary to state that the jurors had made affirmation.

For the Amendment of the Law relating to Bankrupts, and the better Advancement of Justice in certain Matters relating to Creditors and Debtors. Lord Cottenham.

[For 2d reading.]

To improve the Practice and extend the Jurisdiction of County Courts.

[For 2d reading.] Lord Cottenham.

To enable the Lord Chancellor to direct certain Proceedings in Bankruptcy, Insolvency, and Lunacy to be carried to the County Courts. Lord Cottenham.

[For 2d reading.]

House of Commons.

For Registering Copyrights and Assignments, and better securing the property therein.

Mr. Godson.

[In Committee. See the Bill, p. 309, *ante*.]

To allow Writs of Error on Mandamus.

The Attorney General.

To alter the Law as to Double Costs, and other matters. The Attorney General.

To regulate the Sale of Parish Property.

Sir E. Knatchbull.

For the more effectual inspection of Houses, licensed at Quarter Sessions for the Insane.

Lord G. Somerset.

For the Regulation of Buildings.

Mr. F. Maule.

For the Improvement of certain Boroughs.

Mr. F. Maule.

Municipal Corporations. [In Committee.]

To consolidate the Queen's Bench, Fleet, and Marshalsea Prisons. Sir J. Graham.

Regulation of certain Apprentices.

Sir J. Graham.

To amend the Law of Marriage.

Lord F. Egerton.

Small Debt Courts Bills for

Leicester, (jurisdiction 15l.)

Honiton.

THE EDITOR'S LETTER BOX.

"A Clerk in the Country," articulated in June, 1838, can pass six months in the chambers of a conveyancing barrister, and the remaining six months of his fifth year with the agents of the solicitor with whom he has been articulated. If his articles only provide for his passing the last twelvemonth in the office of the agent of the country attorney, he must have the attorney's consent to effect the change.

R. H. T. is informed that so far from his articles being vitiated in any way by *occasionally* working in the chambers of a Barrister during his last year, he may serve a *whole* year.

We have received two letters signed "Amicus," relating to a Legal Discussion Society. The respective parties may leave letters regarding the proposed meeting at our publishers, or advertise a meeting.

We think we are not justified, on the authority of an unknown Correspondent, to describe the marks of the Examiners, indicating the degrees of approval which the Candidates attain, nor do we see the use of the statement.

The letters of "Sexagenarian" and "Civis H," shall be attended to.

The rule of Court relating to the judgment of *non pros*. in ejectment, will be found 21 L. O. 330. It was made in Hilary Term 1841.

A person whose articles expire on the 11th June next may be examined and admitted in Trinity Term, which will not end till Monday the 13th.

In answer to the inquiry of "Gent, one, &c.," we believe that the Bill introduced into the House of Lords by the Master of the Rolls in August last for the "Consolidation and Amendment of the law of Attorneys," and published in Vol. 22, will soon be revived in an amended form. We shall bring it to the notice of our readers as soon as it makes its appearance.

We are informed that the statement made at pp. 224, 320, applies to the *Inner*, not the *Middle Temple*. We have been led into the mistake by a gentleman on whose accuracy we thought we could rely. Perhaps it may not be inappropriate to say that it would be convenient if the Benchers of all the Inns of Court would please to make uniform regulations, and cause them to be published. It must be admitted, however, that the rules are easily ascertained by calling at the Treasurer's or Steward's offices.

The communication regarding a classical examination, and the letter of "An Articled Clerk" and "Omicron," shall be considered.

Most of the last appointed Queen's Counsel practise generally in *all* Equity Courts, and we understand that we were mistaken in stating that Mr. *Koe* had selected two Courts only.

Western Circuit.—At page 303, the Commission-day at Bodmin is stated to be the 24th instead of the 21st March.

The Legal Observer.

MONTHLY RECORD FOR FEBRUARY, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus."

HORAT.

SUMMARY OF RECENT DECISIONS IN THE SUPERIOR COURTS.

ABATEMENT.

The marriage of a female plaintiff before decree, causes a general abatement of the cause: Held, therefore, that where a female, one of several plaintiffs, married, and her co-plaintiffs did not shew that they might not have known of it, all the subsequent proceedings in the cause before revivor, are irregular and void. *Thomas v. Shirley*, 297; see *Crew v. Vernon*, 1 Cro. Car. 97; *Burch v. Maypender*, 1 Vern. 400; *Thompson's case*, 3 P. Wms. 196.

ACTOR.

The Court granted a writ of distringas against an actor, who appeared every night on the stage, but access could not be obtained to him in any other way. *Stokes v. Mathews*, 285.

AMENDMENT.

1. The Court will not make an order for the amendment of a bill after the time allowed by the orders for the purpose has expired, unless the delay is clearly accounted for, and it be shewn that the amendments are material. *Robinson v. Wall*, 282.

2. The declaration stated that the plaintiff had employed the defendant to lay out a sum of 942*l.* in a government "annuity for his life," and alleged as a breach, that he had laid out the money in a private company; the plaintiff at the trial, proved an employment of the defendant to lay out the money in a government "security:" Held, that it was an amendable error within the 3 & 4 W. 4, c. 42, s. 23. *Garford v. Duley*, 319.

ATTORNEY.

1. The Court having, upon the application of a solicitor in the country, ordered his town agent to deliver up all papers in his posses-

sion belonging to such solicitor, within a limited time, and the papers being very voluminous: Held, that the solicitor was not entitled as a matter of course to the four day order, in consequence of the agent not being prepared to deliver up all the papers by the time stipulated, due diligence having been used by him for the purpose of complying with the terms of the order. Held also, that the agent was not subject to costs, for having given notice of motion for a four day order, on the day appointed for delivery up of the papers and not proceeding with it in consequence of the papers being subsequently given up. *Ex parte Husband*, in *re George Smith*, 315.

2. Where a rule requiring a party to pay money has been made absolute, a rule for an attachment absolute in the first instance will be granted. *Ex parte Burgin*, 302; see *King v. Price*, 1 Price, 141.

3. The Court will not compel an attorney to deliver up deeds to one of several trustees where it appears that he has been employed by the *cestui que trust*, and one of the trustees objects to the application. In *re Gregory*, 302.

4. A party has a right to settle his action apart from his attorney, and in order to invalidate the arrangement, it must be shewn affirmatively that there was collusion between the parties, and an intention to deprive the attorney of his costs.

Where the arrangement is suggested between the parties themselves, and the attorney for the defendant, upon being afterwards consulted, approves the arrangement, and at the request of his client, prepares the necessary release to be executed by the plaintiff, he does not, by so doing, improperly mix himself up with the transaction. *Ricketts v. Nash*, 255. See *Jordan v. Hunt*, 3 Dowl. 666; *Nelson v. Wilson*, 6 Bing. 568; *Swaine v. Senator*, 2 B. & P. 99.

AWARD.

In an action of debt, to which the defendant pleaded a set-off, the plaintiff substantiated a demand for a sum exceeding that proved by the defendant to be due to him under the

set-off: an arbitrator, to whom the cause was referred, awarded a verdict, entered for the plaintiff, to be reduced to the sum constituting the difference between the two amounts, with 1s. damages: Held, that the plaintiff was entitled to the general verdict, and that the award was a substantial finding upon the plea of set-off. *Ablett v. Goddard*, 239. See *Tuck v. Tuck*, 5 M. & W. 109; 7 Dowl. 373; *Moore v. Butlin*, 7 A. & E. 595; 2 N. & M. 436.

BANKRUPT.

Where the tenant in possession of premises in respect of which an action of ejectment was brought, had become bankrupt, service of the declaration and notice on the bankrupt, on the official assignee, and on the messenger in possession, was held sufficient to entitle the lessor of the plaintiff to move for judgment against the casual ejector. *Doe d. Johnson v. Roe*, 286; see *Doe d. Baring v. Roe*, 6 Dowl. 456.

BILL OF EXCHANGE.

1. Notice of dishonour of a bill of exchange given to the defendant *G.*, by an occasional servant of the plaintiff, uninterested in the bill, in which the bill was described as "due yesterday," and as being "signed *L. C.* and *G.*," held sufficient in an action by the indorsee against the indorser. *Etheridge v. Green*, 254.

2. Where the notice of dishonour of a bill of exchange, in an action by an indorsee against the indorser, describes the drawer and acceptor as such, it is no objection to the notice, that it does not specify the defendant to be the indorser of the bill. *Phelps v. Kelly*, 318; see *Shelton v. Braithwaite*, 7 M. & W. 436.

3. Certain bills of exchange appeared to be regularly indorsed in the name of *S. M.* The business he had formerly carried on had been assigned to trustees, but for some time he was permitted to interfere in its management, and in the course of doing so to indorse bills required for the business. This trust business was carried on in his name. He at the same time carried on another business on his own private account: Held, that the bills being *prima facie* duly endorsed, the burden of shewing that they were indorsed for the purposes of *S. M.*'s private business, and not for that of the trust, lay on the defendants, the trustees appointed by the creditors. *Furze v. Sharwood and others*, 317.

4. In an action by the indorsee against the acceptor of a bill of exchange, the drawer by the indorsement of his name upon the record, pursuant to the provisions of the 3 & 4 W. 4, c. 42, s. 26, will be made competent to prove on the part of the defendant that the acceptance was made partly for the drawer's accommodation, and partly on an agreement for a loan of money, which money had not, in fact, been advanced. *Kelpurk v. Major*, 283; see *Jones v. Brent*, 4 Taunt. 464; *Faith v. McIntyre*, 7 C. & P. 44; *Edmunds v. Lowe*, 8 B. & C. 407; *Lamblester v. Clarke*, 1 B. & Ad. 809; *Yeomans v. Legh*, 2 M. & W. 419;

Puckle v. Hollings, 1 M. & R. 468; *Creevey v. Bowman*, 16. 496; *Burgiss v. Cuthill*, 6 Car. & P. 282; 1 Moo. & R. 315; *Stanley v. Jobson*, 2 Moo. & R. 103; *Wedgwood v. Hartley*, 10 A. & E. 315; *Slegg v. Phillips*, 4 A. & E. 352; 6 N. & M. 360; *Davis v. Morgan*, 1 Beav. 405.

COSTS.

1. A defendant is entitled to the costs of a motion for dismissal of bill, although the plaintiff undertake to set the cause down on bill and answer, instead of giving an undertaking to speed. *Wilkinson v. Ruitby*, 282.

2. Where a party is aware that evidence cannot be admissible under a particular form of issue, he is not entitled to the costs of preparing that evidence, although he may have reason to believe it is the intention of his opponent to endeavour to raise a question on which that evidence would be material. *Fisher v. Berrell*, 253.

3. A provisional assignee is not entitled to have his costs paid by a mortgagee in a suit for foreclosure against an insolvent mortgagor, where such assignee does not disclaim, but puts in an answer. *Quære*, whether the disclaimer would make any difference. *Appleby v. Duke*, 283. See *Woodward v. Huddon*, 4 Sim. 606; *Boswell v. Tucker*, 1 Beav. 493; *Peake v. Gibbon*, 2 Russ. & M. 354; *Mundy v. Mundy*, 1 Ves. & B.

4. Where an act of parliament for the formation of a canal enables the projectors to take land, and pay the purchase money into Court for the purpose of being laid out in the purchase of other lands, and directs the company to pay the costs of such re-investment, it is necessary that the act should be strictly followed to entitle the parties beneficially interested in the money so paid in to costs. *In re Aire and Calder Navigation*, 282. See *Ex parte Northwich*, 1 Y. & C. 166; *Re Tynafford*, 2 Y. & C. 522.

CONSTRUCTION OF ORDERS.

1. Where an order has been made by mistake for a reference to the wrong master to determine as to exceptions taken to an answer for scandal and impertinence, it is a motion of course to order the reference to be made to the proper Master, and therefore such motion need not be made before the Judge marked on the bill.

The circumstance of such reference having been proceeded with before the vacation master instead of before the master in rotation, will not prevent the Court from rectifying the error, and referring the matter to the Master in rotation, notwithstanding the time may have expired within which, according to the 12th order of 1828, the order of reference would be considered as abandoned. *Crowe v. Columbine*, 316.

2. The order of April, 1841, relating to applications for preventing the transfer of funds, does not authorise the Court to dispense with the appearance of the party whose fund is sought to be affected, though he may have

absolutely assigned his share, but only of those whose shares are not charged. *Wood v. Vincent*, 251.

3. In preparing a report under the 48th of Lord *Cottenham's* orders, so much of the evidence adduced before the Master as is sufficient to enable the Court to judge of the grounds upon which the Master came to his conclusion, should be stated. *Rees v. Keith*, 252.

CREDITOR.

Application by a creditor for leave to prove a debt before the Master, previously to the first apportionment of the fund, should be by petition, but

Semble, that under special circumstances, the Court, in its discretion, will grant such an application upon motion. *Pruist v. Marley*, 300. See *Angel v. Haddon*, 1 *Mal.* 529.

EJECTMENT.

1. A defendant in ejectment having absconded, only leaving a small quantity of wearing apparel on the premises, and a person appearing on the premises who refuses to state where the defendant is gone, service on him may be effected as good service on the defendant. *Doe d. Lord Radnor v. Roe*, 285.

2. Where it appears that a writ of error *coram nobis* is brought for the purpose of delay to the plaintiff, the Court will grant a rule nisi to issue execution, notwithstanding the writ has been sued out. *Doe d. Sturt v. Mobbs*, 238.

3. It is sufficient service, where the tenant has become bankrupt, to serve the declaration on one of the assignees, who is sworn to be the tenant in possession. *Doe d. Ash v. Roe*, 301.

EVIDENCE.

1. Where secondary evidence is sought to be given of an agreement alleged to have been lost, the Court will presume that such agreement has been properly stamped. *Hart v. Hart*, 252; see *Res v. Buckley*, 7 *East*, 45; *Crisp v. Anderson*, 1 *Stark*, 35; *Pooley v. Goodwin*, 4 *A. & E.* 94; *Res v. Castlemorton*, 3 *B. & Ald.* 388.

2. A defendant who has suffered judgment by default, cannot be called by the plaintiff as a witness against his co-defendant in an action of contract; he has an interest in the result of the cause, on account of his probably becoming entitled to call on his co-defendant for contribution. *Pipe v. Steele*, 252; see *Brown v. Brown*, 4 *Taunt.* 752; *Worrell v. Jones*, 7 *Bing.* 795; *Nordin v. Williamson*, 1 *Taunt.* 378; *Mant v. Mainwaring*, 8 *Taunt.* 169; *Green v. Sutton*, 2 *M. & R.* 269.

3. The plaintiff brought an action for a malicious arrest, and in support of his declaration called a sheriff's officer, who stated that he had arrested the plaintiff by virtue of a warrant which he could not now produce; a writ was proved to have been sued out at the instance of the defendants against the plaintiff, and a conversation between the defendants having reference to the plaintiff being in custody, was shewn to have taken place, and it was also

proved that an application made to a judge for the plaintiff's discharge, was opposed by the defendants' attorney: Held, that there was evidence for the jury, that the plaintiff had been arrested at the instance of the defendants, and that the defendants were not entitled to a nonsuit. *Petre v. Lamont*, 239.

GAMING.

An information under the 1 & 2 *Will.* 4, c. 32, for an offence against that statute, must (s. 41) be laid within three calendar months of the offence committed; and it cannot be heard and adjudicated upon except by the justice before whom it was originally laid.

Quare, whether, if a party should abscond after committing the offence, and be absent for more than three calendar months, an information can be laid against him after his return.

Quare also, whether, under such circumstances, the party can at once be brought before the justices on a warrant, without a summons being previously issued. *Jones v. Gurdon*, 300.

And see *Steeple Chasing*.

JOINT-STOCK.

A petition for the repayment of money deposited by five subscribers to a joint-stock undertaking, ought to state in what right such money is claimed, and

Quare, whether all the subscribers ought not to be, in some way, brought before the Court. *Re Bradford Water Company*, 237.

JUDGMENT.

1. Want of funds is a sufficient excuse for not proceeding to trial according to the course and practice of the Court; and if a rule for judgment as in case of a nonsuit has been obtained, it may on that ground be discharged on giving a peremptory undertaking. *Grange v. Smith*, 254.

2. In answer to a rule for judgment as in case of a nonsuit in an action of libel, the plaintiffs produced affidavits alleging that it would be unsafe for them to proceed to trial immediately, in consequence of an alleged prejudice excited in the public mind, in reference to certain disclosures implicating their character, made by a bankrupt in his examinations. The Court ordered a peremptory undertaking to try, to be given for the sittings after the existing term. *Cook v. Brooks*, 303.

LEGACY.

Where a legacy is given, not in the ordinary way, but under a power of appointment by a married woman, an enquiry as to the children is necessary, previously to an order for payment out of court to a legatee. *Re Osborne*, 237.

LUNACY.

1. The domicile of a person is the proper place for executing a commission of lunacy against him, although far distant from the place where the acts, on which unsoundness of mind is founded, were committed. *In re Tinne*, 234; see *Ex parte Smith*, 1 *Swanst.* 4.

2. It is no objection to issue a writ of *distringas* against a defendant, merely on the ground that he is a lunatic, and confined to a lunatic asylum, if in other respects the practice of the Court has been complied with. *Dodson v. Ward*, 239.

MARRIAGE SETTLEMENT.

Where a reference is ordered to the master to settle and approve a proper settlement, with all usual and customary clauses; powers to invest in real securities, and for the appointment of new trustees, may be inserted, though not in the original articles. *Sampayo v. Gould*, 236; see *Builey v. Manuell*, 4 Mad. 226; *Lindow v. Fleetwood*, 6 Sim. 152; *Hill v. Hill*, 6 Sim. 136.

PLEADING.

The Court will not allow a defendant to plead *non assumpt*, and that part of the materials of which the goods forming the plaintiff's demand are composed, are illegal, according to the provisions of 10 W. 3, c. 2, and 6 Ann. c. 8; and if he has pleaded such pleas, the Court will compel him to strike out one. *Goodman v. Morrell*, 284.

PRACTICE (COMMON LAW).

1. Where a rule has been enlarged upon certain terms, the Court will not dispense with them without some special reason being assigned, or without the consent of the opposite party. *Cosby v. Betts*, 255.

2. If it is sought to proceed to outlawry, it is not sufficient to obtain a *distringas* for that purpose, to swear that the defendant has gone abroad, without shewing the effort to find him in this country. *Anon.* 239.

3. The Court will allow an appearance to be entered for a defendant, where it appears that there is reason to believe that the defendant has received the process, although it has not been personally served. *Robertson v. Farr*, 285.

4. On the 11th January, the defendant in replevin obtained a rule for a special jury, which he served on the 15th, the cause being set down for trial on the 19th; Held, that he was not entitled to the benefit of his rule for a special jury, by reason of the dilatoriness of his proceedings. *Phillip v. Kaily*, 286. See *Chuck v. Harris*, 9 Dowl. 68; *Bush v. Pring*, *ib.* 180; *Gunn v. Honeyman*, 2 B. & Ald. 400.

PRACTICE (EQUITY).

4. The Court will order the payment into Court of a sum of money found due by the Master's report, notwithstanding exceptions may have been taken to such report. *Bridge v. Brown*, 261.

2. The Court will not advance a cause on the ground of serious injury being likely to accrue to one of the parties interested by the hearing been delayed, or of important benefit to such party being made manifest to the Court by a speedy hearing. *Crockett v. Crockett*, 235.

3. The Court will not direct the distribution of a fund until it has been previously ordered

to be carried over to the account of the party entitled. *Ex parte Irge, re Kenny*, 237.

REHEARING.

Although a *caveat* will not suspend the enrolment of a decree beyond twenty-eight days from delivery of the docket, unless it is prosecuted within that time by the presenting of a petition of rehearing, yet if some of the parties for whom the *caveat* was entered, present their petition in due time, the other parties to it may present their petition afterwards; there is no limit to them until actual enrolment. *Attorney General v. Earl of Stamford*, 313. See *Burnes v. Wilson*, 1 Russ. & M. 486; *Ex parte Wright*, 1 Gl. & J. 362.

STEEPLE-CHASING.

A steeple-chase is within the protection of the 11th section of the 18 Geo. 2, c. 34, which applies to all races for stakes of the value of 50l. or more, run at any place within the kingdom. *Evans v. Pratt*, 286. And see *Ximenes v. Jaques*, 6 T. R. 499; *Whaley v. Paget*, 2 Bos. & P. 51; *Bilmead v. Gale*, 4 Burr. 2433.

TRIAL.

1. The plaintiff in his declaration alleged a hiring by the defendant of a timber carriage, with certain chains attached, for a reasonable time, and a promise to return the same, and stated as a breach his neglect to return the chains, to the damage of the plaintiff of 5l.: Held, to be an action for unliquidated damages, and not triable before the undersheriff within the operation of the 3 & 4 W. 4, c. 42, s. 17. *Collis v. Groome*, 302. And see *Price v. Morgan*, 2 M. & W. 53; *Allen v. Pink*, 4 M. & W. 140; 6 Dowl. 668; *Walker v. Needham*, 23 L. O. 203.

2. The defendant's attorney having been served with notice of trial for the first sittings, mistook it for the sittings after term, and the cause was taken as an undefended cause. Upon an application for a new trial it was sworn that about a week before the trial the defendant was informed by the plaintiff's attorney's clerk that the cause was to be tried "next week." The clerk to the defendant's attorney swore that the defendant had informed him that "he had been advised by counsel that he had a good defence on the merits, which the deponent verily believed to be true." The Court, under such circumstances, refused to grant a new trial. *Nash v. Scrimburne*, 255.

And see *Breach v. Cuderman*, 7 Bing. 224; 4 M. & P. 867; *Gault v. Cradley*, 8 Bing. 144; 1 M. & Scott, 229.

3. A new trial being ordered on payment of costs, which were not paid, the Court discharged the rule absolutely in the first instance. *Champion v. Griffiths*, 318.

TROVER.

Under the plea of never possessed to an action of trover, the defendant may set up a lien on the goods in question in respect to a claim of toll, and therefore the plaintiff is entitled to costs of evidence prepared to meet the claim, although the defendant declines to raise that question. *Webb v. Tripp*, 318.

TRUST.

The trustees of a charity having in 1725 alienated the charity property for a term of 999 years: Held, that the Court was not bound to assume that the transaction was improvident as regarded the interests of the charity, but must consider it with reference to the state of circumstances at the time, and that no objection having been made to the alienation for upwards of a century, there must be some strong grounds for the Court's interference. *Attorney General v. South Sea Company*, 235.

See *Attorney General v. Green*, 6 Ves. 452; *Attorney General v. Buckhouse*, 17 Ves. 283; *Attorney General v. Cross*, 3 Mer. 524; *Attorney General v. Warren*, 2 Swanst. 302.

USURY

Where a defendant borrows money on a bill, agreeing to pay more than 5 per cent., and gives a warrant of attorney as a collateral security, the fact that judgment may be, and is immediately entered up under the warrant of attorney, and so by the operation of the 1 & 2 Vict. c. 110, the defendant's lands become charged with the debt, will not bring the case within the 2 & 3 Vict. c. 37, and render the securities void for usury. *Withy v. Gilliard*, 237.

VENDOR AND PURCHASER.

The Court will not, in a creditor's suit, make an order for payment of purchase money, towards discharge of an incumbrance, without a previous reference to the Master to ascertain the amount due on the incumbrance, although it may be admitted by all parties that the amount of the purchase money is not nearly sufficient to discharge the incumbrance. *Hill v. Morris*, 298.

VENUE.

An order having been made for further time to plead by consent, and the defendant having consented to have the usual reservation of the right to move to change the venue struck out of the order, the Court would not amend that order by restoring those words, but left the defendant to wait until the issue had been joined, and then to make a special application. *Keynes v. Keynes*, 285.

WARRANT OF ATTORNEY.

A warrant of attorney will not be set aside on the ground that the true consideration is not stated in the defeazance, a consideration appearing in the defeazance. *Anon.* 301.

WILL.

A gift by will to A. and B. for their natural lives, does not necessarily create a joint-tenancy, provided an interest in the fund is given over after the death of either of them.

A trustee of a deceased lunatic is not entitled to retain in his hands monies belonging to the lunatic's estate, for the purpose of satisfying costs claimed by him relative to the commission under which the lunacy was established, but must apply to the Lord Chancellor for an order to have such costs taxed

and allowed, as a debt against the lunatic's estate. *Wentworth v. Williams*, 298.

See also *Baxter v. Lord Portsmouth*, 5 B. & C. 170; *Brown v. Joddrell*, 3 C. & P. 30; *Cambridge v. Rous*, 8 Ves. 12; *Clark v. Cort*, 1 Cr. & Ph. 154.

WITNESS.

A person who has been convicted of subornation of perjury, cannot in any form give evidence in a court of justice. *In re James Allen*, 284.

PARLIAMENTARY DEBATES RELATING TO THE LAW.

RETIREMENT OF JUDGES IN IRELAND AND SCOTLAND.

As chroniclers of all matters concerning the several branches of the law, we have abridged the debate which took place in the House of Commons on the 10th instant, relating to the resignation of Chief Justice Bushe, and Lord President Hope.

It will be found, also to relate to Lord Cottenham, and Mr. Justice Cresswell.

Lord J. Russell moved for copies of letters of the late Lord President of the Court of Session in Scotland, and the late Chief Justice of the Queen's Bench in Ireland, resigning their judicial offices. He thought it was of the utmost importance that that house should pay vigilant attention to whatever occurred with respect to the judges. They were placed in a very high station; their nomination was for life; they had large salaries; they had retiring pensions allowed them when no longer able to perform their duties; and the performance of those duties was generally attended with the greatest respect and observance on the part of the public and of parliament. So that, while on the one hand, however some might have objected to making them too independent, they at least on the other hand, could not complain of the manner in which they were treated either by parliament or by the public. But if this was the case, and if, indeed, writers of considerable importance pointed out inconveniences as incident upon placing the judges in this high and almost irresponsible station, he thought on the other hand, the country was entitled to expect from them a total and entire devotion to their judicial duties, and that nothing whatever of a party or political character should attach to them. Now, the circumstances which had occurred, and which he certainly thought bore upon the face of them appearances of suspicion, were, that no sooner had one set of ministers been changed for another than two of the highest persons on the bench—one the Lord Chief Justice of the Queen's Bench in Ireland, and the other the Lord President of the Court of Session in Scotland—accepted retiring pensions. On the face of this it must appear to most men that one of two circumstances must have taken place—either that these judges,

during some of the time they held their offices, were for some time unfit for the duties they had to perform, or could not perform them with the intelligence that was requisite for their due performance; or that they had resigned into the hands of their political friends their judicial situations, and obtained retiring pensions while they were yet able to perform them, and that they had thus deprived the public of the use of those talents which ought to be devoted to the service of the country. At the same time, however, there were circumstances in these cases which made it more necessary that an explanation should be given in the House. One was, that with respect to the Lord Chief Justice, he had for some time, it was said, very seldom been able to attend on circuit and perform his duties there; and the other, with reference to the Lord President of the Court of Session in Scotland, was, that it did happen that a near relation of his had been appointed to the vacancy created by his resignation.

Sir J. Graham.—They were told the noble lord had brought forward his motion, not for the purpose of reflecting on the character of the two venerable judges who had lately retired, but as a warning to all future judges not to follow their example. Now he was so far from joining in the warning so administered by the noble lord, that he felt those learned and venerable judges had left a bright example to be followed by all the judges still on the bench. The merits of those learned judges were of the highest order, their impartiality could not be impugned, and the testimony of the bar in each country where they had sat upon the bench was the best evidence he could offer in reply to such an allegation as that of the noble lord. As to Lord Chief Justice Bushe, he saw opposite to him a learned gentleman who had been in later years much opposed to that learned judge; still he was satisfied that hon. and learned gentleman could not have dissented in feeling from the address that was presented by Mr. Dickson, on behalf of the bar, on his retirement, which expressed an unanimous testimony to the talents of that learned and venerable personage, and left nothing to be desired by him on his retirement into private life. If he (*Sir J. Graham*) was not mistaken, Chief Justice Bushe was amongst the most distinguished men in Ireland of his day, and stood almost preeminent in comparison—without fear of comparison—with Gratian, Curran, Plunkett, and the other great men of that time; and he certainly thought it must be rather a sting to his advanced age, after he had retired into private life, to come forward and say that his conduct had been such that future judges ought not to follow his example. Now as to the Lord President Hope, he had not the honour of knowing him personally, but he understood that that learned and venerable person had for 37 years presided in the Scotch Courts, that he had for seven years been Lord Justice Clerk, and for 30 years Lord President of the Court of Session. Until the present moment, however, whatever

might have been the heat of party in the country, he had understood that the integrity of the conduct of that judge had never been called into question. The noble lord laid it down that it was most important for that house to pay attention to the circumstances attending the resignation of judges, and his jealousy on this occasion was not confined to Scotland, but extended to Ireland. It was not only a Lord Chief Justice that had retired—they had heard also of a Lord Chancellor retiring, not upon the accession of a government to office, but when the government had been virtually condemned, condemned by the house and by the country, and when the longer continuance in office of that government was known to be impossible. That was a case the circumstances of which were not left to vague surmise—it was not left to be suspected whether the government in that case offered some inducement to the noble person in question to retire when still fully competent to discharge the duties of his office (in the present case all such allegations were matters to be inquired into, and requiring to be proved); but the circumstances attending the resignation of Lord Plunket were known to all the world, for they had been stated by Lord Plunket himself from the judgment seat on the day of his resignation, in terms which he would read to the house, begging them to bear in mind how important the noble lord opposite considered it was that they should know whether there had been any “indirect communication” in the cases of which he complained. Now, hear what Lord Plunket then said as to the communication made to them at that time on the subject of his resignation. These were his own words:—“With regard to the particular circumstances which have occasioned my retirement, I wish to say a very few words. I think it a duty which I owe to myself and to the members of the bar to state that, for my retirement on this occasion, I am not in the slightest degree answerable. I have never, directly or indirectly, sanctioned it; and in giving my assent to the proposal which was made to me of retiring, I was governed solely by its having been requested of me as a personal favour to do so, by a person to whom I owe such deep obligations that an irresistible sense of gratitude made it impossible for me to do anything but what I have done.” Now he would simply assure the house and the country, that as regarded the cases of the Lord President and that of the Lord Chief Justice Bushe, no member of the government, no Solicitor-General for Scotland, no Lord Lieutenant of Ireland, had asked either the one or the other learned judge as a “personal favour” or out of “gratitude” to retire. The present government had never in any such way tampered with such persons; their resignations had been freely offered and accepted by them on public grounds only, and they had, to the best of their judgment advised the crown with regard to the manner in which it was most suitable to fill up the vacancies thus created. Nor would he, unless compelled by a vote of that house, con-

sént to a course which the noble lord admitted was an unusual one, or agree to stamp something like disgrace on these venerable personages. He would not then, consent to the production of these letters. Would that he could produce to the house those venerable persons themselves, shaken somewhat, perhaps, by age, but strong in the consciousness of integrity, with bright hopes still of honest fame mingling with brighter hopes; if he could produce them there he knew so well the generous nature of that house, that all angry feeling of party would at once subside in their presence, and would be followed by a desire, unanimous and universal, not to curse their retirement by pangs such as a motion like this would inflict. They would treat them with reverence and respect; and even the noble lord himself would regret that in a hasty moment he had been betrayed into making such a motion.

Mr. O'Connell said, the right hon. baronet had appealed to his testimony in favour of Chief Justice Bushe, insinuating, as he understood the right hon. gentleman, that it would have weight with the house, inasmuch as that learned judge was opposed to his politics. Now Chief Justice Bushe ought not to be opposed to any man in politics. The right hon. baronet must have meant, since his accession to the bench, for previously, that learned gentleman and he (Mr. O'Connell) agreed perfectly well in politics.

Mr. J. Graham.—And while he was Solicitor-General from 1805 to 1822?

Mr. O'Connell.—Yes. He had always been the advocate of the Catholic claims. He began by opposing the union; he was the comrade and rival of the Grattans, the Currans, and the Ponsonbys of that time; superior to them in many qualities, as an orator he was inferior to them in none. He had the happiest vocabulary he (Mr. O'Connell) had ever heard; he was an excellent lawyer and an accomplished gentleman. He was all this; but the Charles Bushe that was then was not the Charles Bushe that had recently resigned his seat upon the bench since the Tory ministry had come into power. He (Mr. O'Connell) did not blame him. It was the decay of nature, a beautiful and mighty wreck, but, notwithstanding that, a wreck. He had adhered to the bench after he had ceased to be useful, with a desperate and unhappy tenacity, until he could procure a successor more congenial to his political sentiments than he was likely to have obtained had he resigned a little sooner. He did not impeach the integrity of Chief Justice Bushe; but he did allege that his faculties had so forsaken him at the time that he was incompetent to the discharge of his judicial duties. Everybody had observed that, and his best friends had urged him to resign; but he refused to do so, and held his place until there was a change of administration. It was melancholy that these things should occur, while they showed with how much constitutional jealousy they ought to be viewed. Addresses from the bar had been spoken of; but was there, let him

ask, any great weight to be given to addresses from the bar? Was there no fellow-feeling on the bench to influence the getting up and signing of those addresses? or was it quite prudent for a barrister in one court to refuse to be a party to an address to the judge of another? Besides, few would like to assail a man in decrepitude and decay. It was with pain he felt himself compelled to say these things. He had not been stingy in his praise of those qualities which had distinguished Chief Justice Bushe as a lawyer and a gentleman, and he deeply lamented that he should form one of those unhappy examples of partisan tenacity to the bench which prevailed in this country.

Mr. Shaw said, in all that the hon. and learned gentleman opposite had said, regarding the eloquence and eminence of Chief Justice Bushe, he fully and cordially coincided; but from what had fallen from him regarding the declining abilities of that learned judge, he totally disagreed. He believed, that until the last circuit which Chief Justice Bushe went, which was the summer circuit of last year, there had been no evidence of his abilities having so far declined as to prevent the due performance of his duties. Then was that he himself had become aware that his health was declining, and then it was that he intimated to his friends and acquaintances—but without reference to what the political character of the Government was or might be, that in the following term he would take his seat in the Queen's Bench for the last time. He (Mr. Shaw) was fully convinced, and since he saw the notice of the noble lord on the paper, he had availed himself of every opportunity of making inquiry on the subject—he was fully convinced that under any circumstances Chief Justice Bushe would have sent in his resignation previous to the last term of last year.

Sir R. Peel.—The name of Lord Corehouse having been mentioned, reminded him that he had been placed upon the bench by him (Sir R. Peel), not because he belonged to the same political party, but because he was one of the most eminent members of the bar, and one of the greatest ornaments of his profession. He had selected Mr. Cranston for the judicial bench in Scotland, solely on account of his merits and qualifications. Disregarding his political claims altogether, he had conferred upon the public the inestimable advantage of Mr. Cranston's abilities. And now, with respect to those judicial offices which had become vacant since the accession to power of the present government: To the appointment of Mr. Cresswell a word of objection had not been offered. It was an appointment admitted to have been conferred upon him in acknowledgment of his superior professional claims, without reference to his political connexions, and one which had been ratified by the public voice. The present Government had had the disposal of two other appointments in the Courts of Equity—appointments which had been constituted in the course of last session by act of Parliament,

under circumstances which the house very probably still bore in mind. They were two judicial offices of great prize and distinction in the profession. Her Majesty's Government were as sensible as the hon. member for Finsbury could be of the high professional character and judicial services of Lord Cottenham, as Lord Chancellor of this country, of whom, as a judge, he (Sir R. Peel) could only speak in terms of the greatest respect and commendation; and the first act of her Majesty's present Government was to tender to that noble and learned lord one of those judicial offices of Vice-Chancellor. He quite understood the motives which actuated Lord Cottenham to decline the offer. Indeed, he owned that the Government could scarcely have expected him, on account of the ordinary usages of the profession, to undertake the duties of Vice-Chancellor, after having performed those of the higher office; at the same time the Government had felt it right not to forego the opportunity of making the offer, in order that should Lord Cottenham be willing to waive that regard to the ordinary usage of the profession, they might secure for the public the continued advantage of his judicial labours, and at the same time create a saving in the public expenditure. He did not, in the least, blame Lord Cottenham for declining to undertake the office, and he admitted that his reasons for not doing so were perfectly valid and honourable. He could assure the House that he was not in the least degree prepared, upon entering office, to expect the resignation of his valued friend, Lord Chief Justice Bushe. He had not even heard that his power of rendering judicial service was at all impaired; it was merely intimated to him that he had attained the age of 75, and had held the office of Solicitor General from 1805 to 1822. Lord Chief Justice Bushe having signified his wish to retire, and he (Sir R. Peel) regarding that wish as a very rational one after twenty years' service, regarding it also as one which might be complied with advantageously to the public, at once accepted his resignation. But that was all that passed on the occasion. There was no stipulation of any kind entered into; no encouragement of any kind offered to Chief Justice Bushe to induce him to resign. On the contrary, he might say, that knowing and appreciating as he did, the talent and abilities of Chief Justice Bushe, if he did anything to influence him one way or the other it was to throw an obstruction in the way of his retirement; for upon his hearing of his desire to resign, he expressed his deepest regret at the circumstance; and so far from wishing for the opportunity of benefitting by such an event, if his voice would have prevailed it should have been used to keep Chief Justice Bushe still on the bench, and to have thereby secured to the public the continuance of his valuable services. As out of office he had not encouraged Chief Justice Bushe to remain on the bench—a course, which he was convinced the pride and dignity of his mind would have heartily re-

jected—so had he not when in office attempted in the remotest degree to influence that learned gentleman to retire. Could he believe that the cordial and affectionate address which had proceeded from the whole of the Irish bar—the whole bar at least having been summoned by public advertisement—was to be totally disregarded on a question of this nature? Could he believe that the advocate for “justice to Ireland” should be the first man in that house to throw such an imputation upon the learned profession of the law in that country, to describe that profession as one whose addresses to retiring judges were to be regarded as mere waste paper, and to assert that while some of its members would sign such documents for the purposes of flattery, others would do so because they had not the moral courage to dissent? It had been said that the appointment of Mr. Hope to the rank of Lord Provost was made for political motives. If it had not been said, the motive had at least been imputed. He (Sir R. Peel) disclaimed the imputation of being actuated by any such motive. The late Lord President retired at his own instance, and his son was appointed to the office, not because of any arrangement which had been entered into, but his peculiar qualification for the office. Those qualifications had elicited the universal voice of the Scottish bar in his favour when he was selected to the office of the Dean of Faculty, and the same high authority bore testimony to the fact, that no more deserving advocate could be appointed as Lord President than Mr. John Hope.

The House then divided; the numbers were—

For the motion	75
Against it	146

Majority 73

PARLIAMENTARY RETURNS.

EXECUTIONS.

TOTAL number of persons *executed* (for all Crimes,) in London and Middlesex, during the

Three years ending December 1821	98
“ “ “ “ 1824	51
“ “ “ “ 1827	53
“ “ “ “ 1830	52
“ “ “ “ 1833	12
“ “ “ “ 1836	0
“ “ “ “ 1839	3

Number of persons *committed for Murder* during the same periods respectively, distinguishing those triennial periods, if any, in which no conviction for murder took place:

Three years ending December 1821	25
“ “ “ “ 1824	36
“ “ “ “ 1827	64
“ “ “ “ 1830	31
“ “ “ “ 1833	29
“ “ “ “ 1836	9
“ “ “ “ 1839	29

No conviction for murder took place during the three years ending December 1836.


LIST OF THE SHERIFFS, UNDERSHERIFFS, AND AGENTS, FOR 1842.

From "The Attorney's Office List," published by E. Spettigue.

ENGLAND.

COUNTIES.	SHERIFFS.	UNDERSHERIFFS.	DEPUTIES AND AGENTS.
<i>Bedfordshire</i>	Robert Lindsell of Fairfield House, Esq.	Mr. Edward Chilwell Wilkinson, Luton	<i>Deputy</i> .—Mr. Wm. Lindsell, 2 Raymond Bldg.
<i>Berkshire</i>	{ Henry Mill Bunbury, of Marlston House, Esq.	Mr. Charles J. Barnes, Lambourn	<i>Deputies</i> .—Messrs. Rickards & Co., 29, Lincoln's Inn Fields.
<i>Berwick-upon-Tweed</i>	{ Ralph Forster, of Berwick-upon-Tweed, Esq.	Mr. Robert Weddell, Berwick	<i>Deputies</i> .—Messrs. Meggison & Co., 3, King's Road, Bedford Row.
<i>Bristol</i> (City of)	Thomas Jones, of Bristol, Esq.	Messrs. Hare & Little, Bristol	<i>Deputies</i> .—Messrs. Bridges & Mason, Red Lion Sq.
<i>Buckinghamshire</i>	John Palmer, of Dorney Court, Esq.	Mr. James, Aylesbury	<i>Deputy</i> .—Mr. William Meyrick, 4, Fournival's Inn.
<i>Cambridgeshire and Huntingdonshire</i>	{ John Linton, of Sturloe, Esq.	Mr. J. Lawrence, Saint Ives	<i>Deputies</i> .—Messrs. Rhodes & Co., 63, Chancery Lane.
<i>Canterbury</i> (City of)	Richard Fletcher Beisely, of Canterbury.	Mr. Thomas Wilkinson, Canterbury	<i>Agent</i> .—Mr. William Kirk, 10, Symond's Inn.
<i>Cheshire</i>	{ Edward Davies Davenport, of Capethorne, Esq.	See <i>The Legal Observer</i> for March.	
<i>Chester</i>	John Lowe, Esq.	Mr. John Finchett Maddock, of Chester	<i>Deputies</i> .—Messrs. Philpot & Son, 3, Southampton Street, Bloomsbury.
<i>Cinque Ports</i>	His Grace the Duke of Wellington.	Mr. Thomas Pain, Dover	<i>Agents</i> .—Messrs. Egan and Waterman, 23, Essex Street, Strand.
<i>Cornwall</i>	Sir Wm. Moulsworth, Bart.	Mr. Philip M. Little, Dronport	<i>Deputy</i> .—Mr. Thos. Sanders, 3, Elm Ct., Temple.
<i>Coventry</i> (City of)	Joseph Ford, of Coventry, Esq.	Mr. Henry Lea, Coventry	<i>Deputies</i> .—Messrs. Austen and Hubson, 4, Raymond Buildings.
<i>Cumberland</i>	{ Fretchville Lawson Ballantine Dykes, of Dovenby Hall, Esq.	Mr. John Steel, Cockermouth	<i>Deputy</i> .—Mr. Coxe, 8, Fournival's Inn.
<i>Derbyshire</i>	James Sutton, of Shardlow, Esq.	Mr. John Barber, Derby	<i>Deputies</i> .—Messrs. Capes & Stuart, 1, Field Court.
<i>Devonshire</i>	Emanuel Lousada, of Peakhouse, Esq.	Mr. C. Bruton, Exeter	<i>Deputy</i> .—Mr. John Clipperton, 17, Bedford Row.
<i>Dorsetshire</i>	Henry Ker Seyner, of Hanford, Esq.	Mr. Francis Smith, Blandford	<i>Deputy</i> .—Mr. Wm. Dean, 109, Guildford Street.
<i>Durham</i>	{ Robert Eden Duncombe Shafto, of Whitworth Park, Esq.	Mr. W. E. Wooler, Durham	<i>Deputy</i> .—Mr. Henry Morgan Vane, 12, Carlton Chambers, Regent Street.
<i>Essex</i>	{ John Faithful Fortescue, of Writtle Lodge, Esq.	Mr. Robert Bartlett, Chelmsford	<i>Deputy</i> .—Mr. T. W. Nelson, 1, New Court, Temple.
<i>Exeter</i> (City of)	William Kingdon, of Haccomb, Esq.	Mr. John Daw, Exeter	<i>Deputies</i> .—Messrs. Dyne & Co., 61, Lincoln's Inn Fields.
<i>Gloucestershire</i>	{ Thomas Henry Kingscote, of Kingscote, Esq.	Mr. Edward Bloxsome, jun., Dursley	<i>Deputies</i> .—Messrs. Bartlett and Bedding, 27, Nicholas Lane, Lombard Street.
<i>Gloucester</i> (City of)	James Peat Heane, of Gloucester, Esq.	Mr. John Burrup, Gloucester, <i>Act. U. S.</i>	<i>Agent</i> .—Mr. R. A. Goodman, 3, South Square, Gray's Inn.

COUNTIES.	SHERIFFS.	UNDERSHERIFFS.	DEPUTIES AND AGENTS.
<i>Hampshire</i>	{ George Henry Ward, of Northwood Park, Isle of Wight, Esq.	{ Messrs. Woodham & Seagram, Winchester	{ <i>Deputies</i> .—Messrs. Hicks & Co., 16, Bartlett's Buildings.
<i>Hertfordshire</i>	{ John Lucy Sudamore, of Kentschurch Park, Esq.	{ Mr. Nicholas Lauwarne, Hereford	<i>Deputy</i> .—Mr. John Simpson, 5, Furnival's Inn.
<i>Hertfordshire</i>	{ George Gould Morgan, of Bricken-donbury, Esq.	{ Mr. Philip Longmore, Hertford	{ <i>Deputies</i> .—Messrs. Hawkins & Co., 2, New Boswell Court.
<i>Kent</i>	Henry Hoare, of Staplehurst, Esq.	{ Mr. Gillott Jonathan Ottaway, Staplehurst	{ <i>Deputies</i> .—Messrs. Palmer & Co., 24, Bedford Row. Hours in Term from 11 to 5. In Vacation from 11 to 3, except between 10th August and 24th October, and then from 11 to 2.
<i>Kingston-upon-Hull</i> (Town and County of Town of)	Samuel Westerdale, of Hull, Esq.	Mr. Thomas Holden, Hull	{ <i>Deputies</i> .—Messrs. Hicks & Co., 5, Gray's Inn Square.
<i>Lancashire</i>	T. R. W. France, of Rawcliffe Hall, Esq.	Mr. John Wm. Richd. Wilson, Preston	<i>Agents</i> .—Messrs. Wigglesworth & Co., 5, Gray's Inn.
<i>Leicestershire</i>	{ John Bainbridge, Story, of Lockington, Esq.	{ Mr. John Barber, of Derby	{ <i>Agents</i> .—Capes & Stuart, Field Court, Gray's Inn.
<i>Lincolnshire</i>	{ Sir John Nelthorpe of Seawby, Bart,	{ Mr. John Hett, Brigg	{ <i>Depts</i> .—Messrs. Dynaley & Co., 4, Bedford Row.
<i>Litchfield</i> (City and County of the City of)	William Vale, jun., of Litchfield, Esq.	Mr. George Birch, of Litchfield	{ <i>Agents</i> .—Messrs. Capes & Stuart, Field Court, Gray's Inn.
<i>Lincoln</i> (City of)	Michael Pewistan, of Lincoln, Esq.	Mr. Richard Mason, Lincoln	{ <i>Depts</i> .—Messrs. Willis & Co., 6, Tokenhouse Yd.
<i>London & Middlesex</i>	{ Alderman William Magnay, Esq., and Alexander Rogers, Esq.	{ John Meek Britten, Esq., and William Pritchard, Esq.	{ Secondaries Office, Basinghall Street.
<i>Norwich</i> (City of)	William Storey of Norwich, Esq.	Mr. A. Dalrymple, Norwich	<i>Agent</i> .—Mr. Bircham, 15, Bedford Row.
<i>Monmouthshire</i>	{ John Etherington Welsh Rolls, of the Hendre, Esq.	{ Mr. James Powles, Monmouth	{ <i>Deputies</i> .—Messrs. Jennings & Bolton, 4, Elm Court, Temple.
<i>Newcastle-upon-Tyne</i>	{ John Thomas Carr, of Newcastle-upon-Tyne, Esq.	{ Mr. Ralph Park Filpison, Newcastle-upon-Tyne	{ <i>Deputies</i> .—Messrs. Meggison & Co., 3, King's Road, Bedford Row.
<i>Norfolk</i>	Wm. Howe Windham, of Fellbrig, Esq.	Mr. Clement William Unthank, Norwich	{ <i>Depts</i> .—Messrs. Sharpe & Co., 41, Bedford Row.
<i>Northamptonshire</i>	{ The Honorable Phillip Sydney, Pierre-point of Evenley Hall	{ Mr. H. P. Markham, Northampton	{ <i>Deputy</i> .—Mr. Wm. T. Clarke, 30, Great James Street, Bedford Row.
<i>Northumberland</i>	{ Edward Riddell, of Cheeseburne Grange, Esq.	{ Mr. Robert Leadbitter, Newcastle-upon-Tyne	{ <i>Deputy</i> .—Mr. Thomas Leadbitter, 7, Staple Inn.
<i>Nottinghamshire</i>	Francis Wright, of Lenton Hall, Esq.	{ Mr. John Martin, 2, New Square, Lincoln's Inn	{ <i>Dep</i> .—Mr. George P. Wilton, 1, Raymond Bdge.
<i>Nottingham</i> (Town of)	Thomas Roberts, of Nottingham, Esq.	Jno. Brewster, Esq., Nottingham, A. U. S.	{ <i>Deputies</i> .—Messrs. Holme & Co., 10, New Inn.
<i>Oxfordshire</i>	{ John Shawe Phillips, of Culham House, Esq.	{ Mr. Samuel Cooper, Henley-upon-Thames	{ <i>Deputy</i> .—Mr. Charles Berkeley, 52, Lincoln's Inn Fields.
<i>Poole</i> (Town of)	Henry Mooring Aldridge, Esq.	Same	{ <i>Agents</i> .—Messrs. Cuvelje & Co., 19, Southampton Buildings.

COUNTIES.	SHERIFFS.	UNDERSHERIFFS.	DEPUTIES AND AGENTS.
<i>Rutlandshire</i>	{ Richard Westbrook Baker, of Cottesmore, Esq.	{ Mr. Richard Newcombe Thompson, Mr. Stainford	<i>Deputies</i> .—Messrs. Clowes & Wedlake, 10, King's Bench Walk.
<i>Shropshire</i>	{ Hervey Justice, of Hinstock, Esq.	{ Mr. Creswell Pigot, Market Drayton	<i>Deputies</i> .—Messrs. Allen & Benbow, 1, Stone Buildings, Lincoln's Inn.
<i>Somersetshire</i>	{ Robert Charles Tudway, of the city of Wells, Esq.	{ Mr. J. L. Peele, Shrewsbury, <i>Act. U. S.</i>	<i>Deputies</i> .—Messrs. W. & E. Dyne, 61, Lincoln's Inn Fields.
<i>Southampton (Town of)</i>	{ Abraham Abraham, of Southampton, Esq.	{ Mr. B. Blanchard, Southampton	<i>Agents</i> .—Messrs. Davies & Cleobury, 21, Warwick Street, Regent Street.
<i>Staffordshire</i>	{ John Edwards Piercy, of Warley Hall, Esq.	{ Messrs. Keen & Hand, Stafford	<i>Deputies</i> .—Messrs. Whyte & Eyre, 11, Bedford Row.
<i>Suffolk</i>	{ Edward Bridgman, of Coney Weston, Esq.	{ Mr. Sturley Nunn, Ixworth	<i>Deputy</i> .—Mr. T. H. Dixon, 5, New Boswell Court, Carey Street.
<i>Surry</i>	{ Charles Barclay, of Bury Hill, Esq.	{ Mr. Charles Thelwell Abbott, 8, New Inn	<i>Deputies</i> .—Messrs. Jenkins and Abbott, 8, New Inn. Hours.—see "Kent."
<i>Sussex</i>	{ George Wyndham, of Petworth, Esq.	{ Mr. Charles Murray, Petworth	<i>Deputies</i> .—Messrs. Palmer & Co., 24, Bedford Row. Hours.—see "Kent."
<i>Warwickshire</i>	{ John Little of Newbold Pacey, Esq.	{ Mr. Charles Woodcock, Coventry	<i>Deputies</i> .—Messrs. Baxter & Co. 48, Lincoln's Inn Fields.
<i>Westmoreland</i>	{ The Earl of Thanet	{ Mr. John Heelis, Appleby	<i>Deputy</i> .—Mr. G. M. Gray, 9, Staple Inn.
<i>Wiltshire</i>	{ Frederick William Rook, of Lackham-House, Esq.	{ Mr. William Edward Tugwell, Devizes	<i>Deputies</i> .—Messrs. Hellier & Co., 6, Raymond Buildings, Gray's Inn.
<i>Worcestershire</i>	{ Edward Holland, of Lenchwick, Esq.	{ Messrs. B. & H. Workman, Evesham	<i>Deputies</i> .—Blower and Vizard, 61, Lincoln's Inn Fields.
		{ Messrs. Gillam & Son, Worcester, <i>Acting U. S.</i>	
<i>Worcester (City of)</i>	{ John Lilley, Esq.	{ Mr. Edward Corles, of Worcester	<i>Agents</i> .—Messrs. Becke and Flower, 7, Lincoln's Inn Fields.
<i>Yorkshire</i>	{ William St. Quintin, of Scampston Hall, Esq.	{ Mr. Alfred Simpson, of Malton	<i>Deputies</i> .—Messrs. Williamson and Hill, 4, Verulam Buildings.
<i>York (City of)</i>	{ Robert Tonge Horsly, of York, Esq.	{ Mr. G. H. Seymour, of York, <i>Act. U. S.</i>	<i>Deputy</i> .—Mr. Charles Lever, 10, King's Road, Bedford Row.
		{ Mr. Luke Thompson, York	
NORTH WALES.			
<i>Anglesea</i>	{ John Sanderson, of Aberbraint, Esq.	{ Mr. Owen Owen, of Gadya, Beaumaris	<i>Agent</i> .—Messrs Capes & Stuart, 1, Field Court.
<i>Carnarvonshire</i>	{ John Griffith Watkins, of Plas, Llanfair, Esq.	{ Messrs. Poole & Powell, Carnarvon	<i>Agents</i> .—Messrs. Jenkins & Abbott, 8, New Inn.
<i>Denbighshire</i>	{ Thomas Molyneux Williams, of Penbedw-Hall, Esq.	{ Mr. Charles Walter Wyatt, St. Asaph	<i>Deputy</i> .—Mr. Wm. Dean, 16, Essex Street.
<i>Flintshire</i>	{ Edward Dymock of Penley-Hall, Ellesmere, Esq.	{  See <i>The Legal Observer</i> for March.	

COUNTIES.	SHERIFFS.	UNDERSHERIFFS.	DEPUTIES AND AGENTS.
Merionethshire	{ The Honorable Thomas Pryce Lloyd, of Mochras.	{ Messrs. Williams & Breese, Pwllheli	{ Agents.—Messrs. Williams & MacLeod, 3, Paper Buildings, Temple.
Montgomeryshire	{ Sir John Roger Kynaston, of Hardwick Hall, Bart.	{ Mr. Edward Williams, Oswestry	{ Deputy.—Mr. William Dean, 16, Essex Street, Strand.
			Strand.
Breconshire	{ Howel Jones Williams, of Coity Mawr, Esq.	{ Mr. Henry Maybery, Brecon	{ Agents.—Messrs Gregory & Son, 12, Clement's Inn.
Cardiganshire	{ Francis David Saunders, of Tynmawr, Esq.	{ Mr. Frederick Rowland Roberts, Aberystwith	{ Agents.—Messrs. Hawkins & Co., 2, New Boswell Court.
Carmarthenshire	{ William Phillips, of Waynagon, Esq.	{ Mr. Lewis Morris, Carmarthen	{ Agent.—Mr. Hy. Chas. Chilton, 7, Chancery Lane.
Carmarthen (County of the Borough of)	{ Benjamin Jones, of Carmarthen, Esq.	{ Mr. Richard Edward Jones, Carmarthen	{ Agent.—Mr. Henry Charles Chilton, 7, Chancery Lane.
Glamorganshire	{ Henry Lucas, of Uplands, Esq.	{ Mr. John Gwyn Jeffreys, of Swansea	{ Agents.—Messrs. Holme & Co., 10, New Inn.
Pembrokeshire	{ Robert Frederick Gower, of Glandofan, Esq.	{ Mr. Anlot, of Cardigan and Haverfordwest	{ Agent.—Mr. Nation, 4, Orchard St. Portman Sq.
Radnorshire	{ David Oliver, of Rhydolgog, Esq.	{ Mr. R. Banks, Kingston	{ Agent.—Mr. H. Hammond, 16, Furnival's Inn.

Warrants are granted in Town, except for Canterbury; the Cinque Ports; Southampton; Caermarthen and Lancashire.

LEGAL OBITUARY OF 1841.

January.

1. Henry Wood, of Godalming, solicitor, aged 70. He was 15 years coroner for the Western division of the county.

John Pensam, barrister at law, aged 80; many years secretary to Lord Chancellor Eldon.

John Emilius Daniel Finch Hatton, senior bencher of the Inner Temple, aged 86. He was called to the bar in 1781.

20. Peter Earnshaw, of Red Cross Street, solicitor, aged 74.

24. Albert Crompton, of Lincoln's Inn, barrister at law, aged 42. He was called the 9th May, 1823, and practised at the Equity bar.

29. John Cooke, of Lincoln's Inn, barrister at law. He was called 3d May, 1833, and went the Western Circuit and Somersetshire Sessions.

February.

1. The Right Hon. Robert Henley, Baron Henley (of the Irish peerage), aged 52. He obtained the degree of M.A. at Oxford, 9th June, 1814; and was called to the bar 28th June, 1814, by the society of Lincoln's Inn. He was a Commissioner of Bankruptcy, and the author of a valuable work on the bankrupt law. He was appointed a Master in Chancery on the 23 March, 1826, and was married to a sister of Sir Robert Peel.

14. Rawson Parke, formerly of the Inner Temple. He was called to the bar in 1789, and died at the age of 85.

17. Joseph Chitty, barrister at law, of the Middle Temple, aged 65. He practised several years as a special pleader, and was called to the bar on the 28th June, 1816. He was the author of many valuable works, particularly on Bills of Exchange, Contracts, Practice, Pleading, &c.

25. Kénrick Collett, one of the Masters of the Exchequer of Pleas, aged 67. He was the eldest son of Richard Collett, of Chancery Lane, formerly coroner for Middlesex.

26. William Yates Alban, of Stone Buildings, Lincoln's Inn, a solicitor.*

March.

6. Hugh Cann, of Hudwich, near Holworthy, Devonshire, a solicitor, aged 72.

19. Sir John Richardson, Knt. aged 70. He was called to the bar on the 23d June, 1803, and went the Northern Circuit. On 3d June, 1819, he was appointed one of the Judges of the Court of Common Pleas, and resigned his office in Easter vacation, 1824, on account of illness.

Rowley Lascelles, one of the benchers of the Middle Temple, aged 71. See memoir p. 74, ante.

31. Benjamin Hall Brown, of Lymington, solicitor.

April.

16. John Pearson, late Advocate General of Bengal, aged 70. He was a barrister of Lincoln's Inn, and was called on the 28th May, 1802.

* Marked thus were members of the Incorporated Law Society.

18. Colin Mackenzie, of the Inner Temple, and Western Circuit, barrister at law. He was called to the bar 2d July, 1813.

James Quallett, of Bermondsey, solicitor, aged 64.

Thomas Crosby Treslove, Q.C. He was called to the bar 12th May, 1803, and was formerly recorder of Queenborough. He was a bencher of Lincoln's Inn.

John Clutton, of High Street, Southwark, solicitor.*

May.

1. William Foxton, of the Queen's Remembrancer's Office, in the department of Sheriffs' accounts, aged 48.

Reginald Merivale, of the Chancery Registrar's Office, aged 30, third son of Mr. Merivale, the Commissioner of Bankruptcy.

4. Jonathan Brundrett,* of King's Bench Walk, Temple, solicitor, one of the committee of management of the Incorporated Law Society. See his memoir, 22 L. O. 116.

William Mortimer, jun., of Teignmouth, solicitor, aged 23.

7. Thomas Barnes, barrister at law, M.A. principal Editor of the *Times*, aged 56.

15. Thomas Merriman, formerly town clerk of Marlborough, solicitor. He twice served the office of Mayor.*

16. Henry Moreton Willis Dyer, of the Inner Temple, barrister at law. He was called to the bar on the 7th June, 1799. He was formerly Judge of the Vice Admiralty Court at Bermuda, and was appointed a police magistrate in 1817.

William Turner Meryweather Turner, barrister at law, aged 41. He was called to the bar 22d November, 1831, and went the Oxford Circuit and the Stafford and Worcester Sessions.

Francis Moore, at Sidney, New South Wales, barrister at law, formerly of the Oxford Circuit. He was called to the bar in 1836.

27. George Pocock, of Lincoln's Inn Fields, solicitor, aged 52.*

June.

3. James Wake, of Lincoln's Inn, barrister at law. He was called to the bar 1st February, 1802, and practised at Exeter.

8. John Marten Wood, of Lewes, solicitor, aged 53.

14. William Duberly, of Gloucester, solicitor, aged 45.

26. William Brame Elwyn, D.C.L., recorder of Deal, aged 68. He was called to the bar by the society of the Inner Temple, on the 17th May, 1805.

22. William Butt, upwards of 30 years deputy Serjeant-at-Arms of the Court of Chancery.

27. James Christmas Fry, Senior Registrar of the Court of Chancery, aged 68.

30. William Greaves, of Walthamstow, formerly of the eminent firm of Dennett and Greaves, aged 76.

July.

1. Sir Thomas Eadyne Tomlins, Knt., barrister at law, one of the benchers of the Middle Temple, aged 80. See memoir, page 134, *ante*.

1. Thomas Brighton, of Downham, solicitor, aged 86.

Frederick Box, of Abingdon, solicitor, aged 28.

3. Richard Bignell, of Thame, solicitor.

15. David Jones, of Size Lane, solicitor, aged 64.

16. Sir Thomas Andrew Strange, Knt. M. A. aged 83, second son of the late Sir Robert. He was called to the bar on the 25th November, 1785, by the society of Lincoln's Inn; was appointed Chief Justice of Nova Scotia in 1791, and afterwards Chief Justice of the Supreme Court at Madras.

27. R. G. Hall, of Lincoln's Inn, barrister at law, aged 50. He was called to the bar in 1816.

Owen Flintoff, barrister at law, aged 32. He was drowned in the river Gambia, on the West coast of Africa.

August.

14. Thomas Andrew James, barrister at law, only son of Thomas James, Esq., a bencher of Gray's Inn. He was called to the bar 7th May, 1834.

John Wills, of Doctor's Commons, Proctor.

September.

21. John Hanson, of Gray's Inn, formerly Solicitor of Stamps, aged 80.

29. George Prideaux, late of Plymouth, where he practised 35 years as a solicitor.

October.

1. William Check Bousfield, of Gray's Inn, late one of the Registrars of the Court of Bankruptcy, aged 44.

4. William Harrison, Queen's Counsel, and a bencher of the Inner Temple, Attorney General for the Duchy of Cornwall, and counsel for the Treasury and War Office. He was called to the bar in January, 1800, and practised as a parliamentary counsel.

10. Sir John Bayley, bart. aged 78. See memoir, p. 177, *ante*.

26. Jas. Freeman, barrister at law, aged 23.

27. Daniel Gould, of Honiton, solicitor, aged 69.*

December.

1. Francis Paul Stratford, aged 89, late one of the Masters in Chancery. He was called to the bar by the Middle Temple on the 29th June, 1781.

10. Philip Courtenay, aged 56, Q. C. a bencher of the Inner Temple, called to the bar 1st July, 1808. He was counsel for the Mint, and made Queen's Counsel, in 1833.

John Sidney Taylor, barrister at law, aged 43. He was called to the Bar on the 22d Nov. 1822, and went the Norfolk Circuit, and the Aylesbury and Ipswich session. He was distinguished as a public writer in favour of the amelioration of the criminal law.

15. William St. Julien Arabin, serjeant at law, Judge of the Sheriff's Court, London. He was called to the bar at the Inner Temple, on the 8th May, 1801. He was promoted to the degree of serjeant in 1824. He held the office of Deputy Judge Advocate, and for a

short time the office of Judge Advocate. He was also a Judge of the Central Criminal Court.

22. Thomas Warry, of New Inn, solicitor. John Crickitt, proctor, Doctor's Commons, aged 83.

15. Edward Jacob, M.A., one of her Majesty's Counsel, and a bencher of Lincoln's Inn. He was called to the bar 28th June, 1819, and became King's Counsel in 1834. His Reports of cases in the time of Lord Eldon are highly esteemed.

INCORPORATED LAW SOCIETY.

MEMBERS ADMITTED.

Henry Hyde, Ely Place.

Alfred Southby Crowdy, Swindon, Wilts.

John Close, Furnival's Inn.

John Meek Britten, Basinghall Street.

Edmund Byrne, Portugal Street.

Charles John Belcher Hertalet, Norfolk Street.

John Osborne Smetham, Lynn, Norfolk.

John Stephen Spindler Hopwood, Chancery Lane.

William Morgan Benett, Raymond Buildings.

Frederick William Coe, Field Court, Gray's Inn.

MASTERS EXTRAORDINARY IN CHANCERY.

From 25th January to 18th February, 1842, both inclusive, with dates when gazetted.

Allen, Benjamin Tuthill, Burnham, Somerset. Feb. 15.

Cheney, Edward, Birmingham. Feb. 1.

Dudley, Edwin, of Dudley, Worcester. Jan. 28.

Scott, Thomas, Bromsgrove, Worcester. Jan. 28.

Wise, Joseph, Ashborne, Derby. Feb. 1.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 25th January to 18th February, 1842, both inclusive, with dates when gazetted.

Brooks, William, and John Leete, Foster Lane, Cheapside, London, Attorneys and Solicitors. Feb. 11.

Cameron, Archibald, and Henry Foley, Worcester, Attorneys and Solicitors. Feb. 11.

Fletcher, William, and George Blencowe, Northampton, Attorneys and Solicitors. Feb. 18.

Owston, Robert, and Frederick Garfit, Glamford Briggs, Lincoln, Attorneys and Solicitors. Feb. 11.

Young, Joseph, and William White, of Bishop Wearmouth, Durham, Attorneys and Solicitors. Jan. 25.

BANKRUPTCIES SUPERSEDED.

From 25th January to 18th February, 1842, both inclusive, with dates when gazetted.

Aarons, Benjamin, Knowles Court, Doctors' Commons, Furrer. Jan. 28.

King, Thomas, Crofton, Northumberland, Ship Owner and Coal Merchant. Feb. 15.

Rutson, John, Saint Paul's Churchyard, London, Commission Agent. Feb. 15.

Shingler, Samuel, Liverpool, Linen Draper. Feb. 11.

Winder, George, late of Sidney Alley, Leicester Square, but now of Hackney Road, Jeweller. Feb. 11.

BANKRUPTS.

From 25th January to 18th February, 1842, both inclusive, with dates when gazetted.

Appleyard, Thomas, Northowram, Halifax, York, Stone Merchant. *Jaques & Co.*, Ely Place, Feb. 8.

Arthur, John, and David Arthur, Neath, Glamorgan, Ironmasters and Coal Merchants. *Egan & Co.*, Essex Street, Strand. Jan. 28.

Baber, Henry Adolphus, Lindfield, Sussex, Maltster. *Verral & Co.*, Lewes; *Millard & Co.*, Cordwainers' Hall, London. Feb. 11.

Banks, David Ward, Manchester, Dealer in Piano Fortes and Sheet Music. *Capes & Co.*, Gray's Inn; *Law*, Manchester. Feb. 15.

Barnard, George, Portsea, Southampton, Coal Merchant. *Clare*, Size Lane; *Low*, Portsea. Jan. 28.

Beal, Thomas, Sandwich, Kent, Hoyman and Corn Factor. Messrs. *Dyne*, Lincoln's Inn Fields; *Surrage & Co.*, Sandwich. Feb. 11.

Blackmore, Richard, and John Craven, Wakefield, York, Corn Millers. *Preston*, Tokenhouse Yard; *Whitham*, Wakefield. Feb. 8.

Bower, William, Wilmslow, Chester, Cotton Spinner. *Slater & Co.*, Manchester; *Milne & Co.*, Temple. Feb. 8.

Bowers, John, Chipstead, Kent, Grocer and Draper. *Edwards*, Off. Ass.; *Cattlin*, Ely Place. Feb. 8.

Boyle, Wm. Edward, Neath, Glamorgan, Plumber. *Lake & Co.*, Basinghall Street; *Hargreaves*, Neath. Jan. 28.

Brayne, Henry, formerly of Castle Street, Oxford Street, afterwards of Nine Elms, Battersea, and of Manor Place, Clapham. *Surrey*, Coal Merchant; *Lackington*, Off. Ass.; *Stevens & Co.*, Queen Street, Cheapside. Feb. 11.

Brooke, John, jun., Dewsbury, York, Manufacturer. *Hornby & Co.*, St. Swithin's Lane; *Savery & Co.*, Bristol. Feb. 15.

Brown, George, Carlisle, Cumberland, Draper. *Walmley & Co.*, Chancery Lane; *Humphrys & Co.*, Manchester; *Law & Co.*, Carlisle. Feb. 18.

Buber, Henry Adolphus, Lindfield, Sussex, Maltster. *Verral & Co.*, Lewes, Sussex; *Millard & Co.*, Cordwainers' Hall. Feb. 1.

Burgoyne, William, Plymouth, Devon, Builder. *Mantle*, Blackfriars Road; *Edmonds*, Plymouth. Feb. 18.

Burnie, John, Tokenhouse Yard, London, Merchant. *Edwards*, Off. Ass.; *Brown & Co.*, Mincing Lane. Jan. 25.

Butler, James Andrew, Loddington, Northampton, Machine Maker. *Wing & Co.*, Gray's Inn; *Hewitt*, Northampton. Feb. 18.

Canning, Horatio Joseph, Wood Street, Cheapside, London, Scotch Warehouseman. *Pennell*, Off. Ass.; *Murray*, New London Street. Feb. 15.

Cantor, Charles Augustus, late of Calcutta, in the East Indies, now of Upper Montague Street, Montague Square, Merchant. *Turveyand*, Off. Ass.; *Brundrett & Co.*, Temple. Feb. 8.

- Carron, James, Saint George's Circus, Blackfriars Road, Surrey, Draper. *Gibson*, Off. Ass.; *Catlin*, Ely Place. Feb. 15.
- Cassidy, George Berkeley, Kirkwood, Bucklersbury, London, Merchant and Bill Broker. *Gibson*, Off. Ass.; *Buckley & Co.*, Gray's Inn Square. Jan. 28.
- Caswall, Charles, Woburn Place, Russell Square, Lodging-house Keeper. *Turgand*, Off. Ass.; *Cook & Co.*, New Inn. Feb. 11.
- Chambers, William, Oxford, Organ Builder. *Rackstraw*, Oxford; *Philpot & Co.*, Southampton Street, Bloomsbury. Jan. 28.
- Christelow, Charles, York, Woollen Draper. *Williamson & Co.*, Verulam Buildings, Gray's Inn; *Blanchard & Co.*, York. Jan. 25.
- Christie, William, New North Street, Red Lion Square, Bookbinder. *Green*, Off. Ass.; *Starling*, Leicester Square. Jan. 25.
- Coles, James, Bedwelty, Monmouth, Apothecary and Druggist. *Allen*, Lincoln's Inn Fields; *Matthews*, Pontypool. Feb. 18.
- Collos, Arthur, and Alfred Thomson, Brighton, Sussex, Sugar Manufacturers. *Penkivil*, West Street, Finsbury Circus. Jan. 28.
- Cuisset, John, Blackfriars Road, Surrey, Jeweller. *Gibson*, Off. Ass.; *Rolfe & Co.*, South Square, Gray's Inn. Jan. 25.
- Curtis, William, King's Lynn, Norfolk, Brewer. *Pitcher*, King's Lynn; *Clowes & Co.*, Temple. Feb. 18.
- Davies, Robert, Mallwyd, Merioneth, Shopkeeper and Plannel Manufacturer. *Price & Co.*, New Square, Lincoln's Inn; *Davies*, Machynlleth. Jan. 28.
- Fielding, John, and Thomas Fielding, Blackburn, Lancaster, Joiners and Builders. *Troughton*, Liverpool; *Johnson & Co.*, Temple. Feb. 11.
- Fish, Henry, Prince's Row, Picnic, Painter and Glazier, and Builder. *Pennell*, Off. Ass.; *Keene*, Dorset Street, Portman Square. Feb. 18.
- Fisher, William, Lincoln, Carrier by Water, Coal Dealer and Plaster Merchant. *Lee*, Newark-upon-Trent; *Milne & Co.*, Temple. Feb. 18.
- Gatehouse, Charles, Chichester, Brewer and Corn Merchant. *Randall & Co.*, Southampton; *Tilson & Co.*, Coleman Street. Feb. 15.
- George, Samuel Robert, London Wall, London, Victualler and Tailor. *Johnson*, Off. Ass.; *Billing*, Cheapside. Jan. 28.
- Gibbs, John, Great Yarmouth, Norfolk, Tavern Keeper. *White & Co.*, Lincoln's Inn Fields; *Worship & Co.*, Great Yarmouth. Feb. 8.
- Gifford, Georgiana, Parson's Green, Fulham, Middlesex, Schoolmistress. *Johnson*, Off. Ass.; *Tyrrell*, Guildhall. Feb. 8.
- Gipps, John Methuen, late of Duke Street, Grosvenor Square, and of Margaret Street, Cavendish Square; now of Howland Street, Tottenham Court Road, Wine Merchant. *Graham*, Off. Ass.; *Billing*, King Street, Cheapside. Feb. 11.
- Goodeve, William Stiles, Chichester, Sussex, Banker's Clerk, and also a Brick Maker and Miller. *Raper & Co.*, Chichester; *Blackmore & Co.*, New Inn. Feb. 18.
- Greenwell, Joseph, and Stephen Greenwell, Shadforth-Mill, Durham, also of Crimhouse, near Shadforth, and of Sherborn, in the same county, Millers, Corn and Flour Dealers, Lime Burners, Graziers, Farmers, and Quarrymen. *Rogerson*, Norfolk Street, Strand; Messrs. *Marshall*, Durham. Feb. 8.
- Grundy, William, Manchester, Yarn Dealer and Commission Agent. *Makinson & Co.*, Temple; *Atkinson & Co.*, Manchester. Feb. 15.
- Hallett, George, Ryde, Isle of Wight, Draper. Messrs. *Sole*, Aldermanbury; *Hearn & Co.*, Newport. Feb. 11.
- Halliley, Edward, Leeds, York, Cloth Manufacturer. *Savery & Co.*, Bristol; *Hornby & Co.*, St. Swithin's Lane. Feb. 8.
- Haworth, Edmund, Manchester, Merchant. *Abbott & Co.*, Charlotte Street, Bedford Square; Messrs. *Bennett*, Manchester. Feb. 18.
- Hazell, Richard, Ramsbury, Wilts, Corn Dealer and Brewer. *Edwards*, Aldbourn, Wilts. *Norton & Co.*, New Street, Bishopsgate. Feb. 1.
- Hide, Singer Edward, Broadwater, Sussex, Builder. *Rolfe & Co.*, South Square, Gray's Inn; *Edmunds*, Worthing. Feb. 11.
- Higgins, John, and James Mannock, Dukinfield, Chester, Engineers. *Spinks*, John Street, Bedford Row; *Gartside*, Ashton-under-Lyde. Feb. 8.
- Holt, Henry, Peckham, Surrey, Bookseller. *Belcher*, Off. Ass.; *Dover*, South Square, Gray's Inn. Jan. 28.
- Holt, John, Livesey, Lancaster, Grocer. *Milne & Co.*, Temple; *Neville & Co.*, Blackburn. Feb. 1.
- Hunnybun, James, Cambridge, Ironmonger. *Eaden*, jun., Cambridge; *Clark & Co.*, Essex Street, Strand. Feb. 15.
- Jolley, James, Saint Albans Place, Haymarket, and of Pelham Road, Brompton, Builder, Plumber, Painter, and Glazier. *Gibson*, Off. Ass.; *Allen & Co.*, Queen Street, Cheapside. Feb. 1.
- Jopp, Andrew, Cornhill, London, Ship and Insurance Broker. *Green*, Off. Ass.; *Kingsford*, Mark Lane. Feb. 15.
- Kirkpatrick, James, Newport, Isle of Wight, Southampton, Banker. *Hearn & Co.*, Ryde; *Fosters & Co.*, John Street, Bedford Row. Feb. 11.
- Lane, Samuel, Hoxton Old Town, Old Street Road, Victualler. *Edwards*, Off. Ass.; *Showbridge*, Bedford Row. Feb. 18.
- Lawther, John, Newcastle-upon-Tyne, Ship and Insurance Broker and Timber Merchant. *Crosby & Co.*, Church Court, Old Jewry; *Hodge*, Newcastle-upon-Tyne. Feb. 15.
- Laycock, James, Colne, Lancaster, Tallow Chandler, Grocer, and Draper. *Wiglesworth & Co.*, Gray's Inn; *Hardacre*, Colne. Jan. 25.
- Lennard, John Samuel, White Conduit Fields, Victualler. *Lackington*, Off. Ass.; *Heathcote & Co.*, Coleman Street. Feb. 15.
- Littledyke, Richard, Brudenell Place, New North Road, Middlesex, Linen Draper. *Whitmore*, Off. Ass.; Messrs. *Sole*, Aldermanbury. Feb. 8.
- Looney, William, Whitehaven, Cumberland, Cooper and Herring Curer. *Stubbs*, Furnival's Inn; Messrs. *Perry*, Whitehaven. Feb. 15.
- Manning, Edmund, and Cornelius Charles Manning, High Street, Aldgate, London, Drapers. *Groom*, Off. Ass.; *Monckton*, Bartlett's Buildings, Holborn. Feb. 11.
- Miller, Joseph, Stockton-on Tees, Durham, Patent Sail Cloth and Rope Manufacturer. *Edwards*, Off. Ass.; *Bartrum & Co.*, Bishopsgate Street within. Feb. 8.
- Morris, William, Long Lane, Bermondsey, Surrey, Leather Dresser and Parchment Manufacturer. *Johnson*, Off. Ass.; *Bennett & Co.*, Scotts Yard, Bush Lane. Feb. 15.
- Murray, Edward Thomas, Church Street, Southwark, Surrey, Leather Seller, and of Great George Street, Bermondsey, Surrey, Japaner and Enameller of Leather. *Belcher*, Off.

- Ass.; *Loughborough*, Austin Friars. Jan. 25
Nicholls, Charles, Shrewsbury, Salop, Flannel Merchant. *Powmall & Co.*, Staple Inn; *Cooper*, Shrewsbury. Feb. 1.
Nichols, Samuel, Birmingham, Gold Pencil Case Maker. *Holmes*, Great Knight Rider Street, Doctor's Commons; *Yeates*, Birmingham. Feb. 15.
Owen, Samuel, Conway, Carnarvon, Innkeeper and Victualler. *Abbott & Co.*, New Inn. Feb. 1.
Protheroe, John, jun., Bristol, Iron and Tin Merchant, and Commission Agent. *Clarke & Co.*, Lincoln's Inn Fields; *Smith*, Bristol. Feb. 8.
Robins, William, Stone, Stafford, Ironmonger, Tinman, and Brazier. *Dickenson*, Stone; *Smith*, Chancery Lane. Feb. 8.
Rogers, Henry, and Frederick Rogers, Finch Lane, Cornhill, London, Wine and Spirit Merchants. *Graham*, Off. Ass.; *Rack*, Mincing Lane. Feb. 18.
Richards, William, Oxford Street, Victualler. *Turgand*, Off. Ass.; *Dyson & Co.*, Bedford Row. Feb. 15.
Sanders, John, Manor Place, King's Road, Chelsea, Baker. *Belcher*, Off. Ass.; *Harrison & Co.*, Walbrook. Jan. 28.
Schlesinger, Morris, and Michael Samuel Schlesinger, Basinghall Street, London, Merchants. *Belcher*, Off. Ass.; Messrs. *Freshfield*, New Bank Buildings. Feb. 8.
Schofield, William, Oldham, Lancaster, Machine Maker. *Milne & Co.*, Temple; *Whitehead & Co.*, Oldham. Feb. 18.
Sharman, Frederick, Barge Yard, Bucklersbury, London, Shoe Factor. *Edwards*, Off. Ass.; *Gale*, Basinghall Street. Jan. 28.
Sharp, Richard Johnson, Liverpool, Victualler. *Vincent & Co.*, Temple; *Jones*, Liverpool. Jan. 25.
Sleeman, Thomas, Tenby, Pembroke, Wine and Spirit Merchant, and General Merchant. *Makinson & Co.*, Temple; *Haberfeld*, Bristol. Feb. 15.
Sly, James, Melcombe Regis, Dorset, Draper. Messrs. *Sole*, Aldermanbury. Feb. 15.
Smith, William, Saint Albans, and of Watford, Herts, and also of Rotherhithe, Surrey, Miller and Seed Crusher. *Druce & Son*, Billiter Square. Feb. 18.
Smith, James Grant, Bath, Brewer and Malster. *Adlington & Co.*, Bedford Row; *Gaby*, Bath; *Hutcheller & Co.*, Bath. Feb. 15.
Sorby, William, Chorlton-upon-Medlock, Lancaster, Chemist and Druggist. *Walmley & Co.*, Chancery Lane; *Humphrys & Co.*, Manchester. Feb. 15.
Spanton, John, Bermondsey Street, Surrey, Cheesemonger. *Green*, Off. Ass.; *Cattlin*, Ely Place. Feb. 1.
Spears, George, Ogilvy, Fleet Street, London, Lace Warehouseman. *Graham*, Off. Ass.; Messrs. *Sole*, Aldermanbury. Jan. 25.
Statham, Thomas, Huddersfield, York, Hosier. *Lever*, King's Road, Bedford Row; *Barker & Co.*, Huddersfield. Feb. 15.
Stephenson, Peter, Manchester, Lancaster, Mercer and Draper. Messrs. *Baxter*, Lincoln's Inn Fields; *Sale & Co.*, Manchester. Jan. 28.
Stone, Edward James, Belle Sauvage Yard, Ludgate-Hill, London, Maker of Playing Cards, and other Cards. *Pennell*, Off. Ass.; *Davison & Co.*, Bread Street, Cheapside. Jan. 28.
Stratton, Edward, Longcot, Berks, Corn Dealer. *Barnes*, Chipping Lamborne, Berks. Feb. 1.
Thompson, James, Newcastle-upon Tyne, Joiner, and Builder. *Crashy & Co.*, Church Court, Old Jewry; *Hugle*, Newcastle-upon Tyne. Jan. 28.
Thomson, Geo., and James Forbes, Crutched Friars, London, Corn-factors. *Groom*, Off. Ass. *Taylor*, Nicholas Lane. Feb. 8.
Thompson, John, Sunderland, Durham, Chain and Anchor Manufacturer. *Swain & Co.*, Old Jewry; Messrs. *Wright*, Sunderland. Feb. 18.
Vaile, Wm., Oxford Street, Laceman. *Belcher*, Off. Ass.; *Beaumont & Co.*, Lincoln's Inn Fields. Feb. 8.
Ward, John, Irstead, Norfolk, Cattle jobber. *Se-well & Co.*, Norwich; *Wood & Co.*, Falcon Street, Aldersgate Street. Feb. 15.
Warne, Edmund, Lisle Street, Westminster, Carpenter and Builder. *Alager*, Off. Ass.; *Allen & Co.*, Carlisle Street, Soho. Feb. 11.
Waters, Richard, Newport, Monmouth, Iron and Tin Plate Manufacturer and Money Scrivener. *Llewellyn*, Newport; *White & Co.*, Bedford Row. Feb. 8.
Wates, John, Old Kent Road, Surrey, Victualler. *Green*, Off. Ass.; *Lucas & Co.*, Argyle Street, Regent Street. Feb. 1.
Webb, Alfred, Liverpool, Carpet-seller. *Johnson & Co.*, Temple; *Higson & Co.*, Manchester. Jan. 25.
Weldon, Samuel Eddlestone, Cambridge, Butcher. *Eaden* jun., Cambridge; *Clark & Co.*, Essex Street, Strand. Jan. 25.
Wells, John Deane, George Street, Mansion House, London, Commission Agent. *Alager*, Off. Ass.; *Herald*, Austin Friars. Feb. 1.
Whitby, Luke, Green Dragon Yard, Whitechapel, Builder. *Alager*, Off. Ass.; *Dickson & Co.*, Frederick's Place, Old Jewry. Feb. 8.
Wilcocks, Wm., Bracknell, Berks, Saddler and Harness maker. *Graham*, Off. Ass.; *Bridger & Co.*, Finsbury Circus. Jan. 25.
Willoughby, John Rivis, York, Builder and Stone Mason. *Johnson & Co.*, Temple; *Leemas*, York. Feb. 8.
Wilson, Richard, Blyth Tile Sheds, Northumberland, Manufacturer of Bricks and Argillaceous Marble. *Crashy & Co.*, Church Court, Old Jewry; *Hugle*, Newcastle-upon Tyne. Jan. 28.
Woodcock, John, Stratford, Essex, Builder. *Belcher*, Off. Ass.; *Plews*, Bucklersbury. Feb. 8.
Wooster, Thomas, jun., late of Newcastle-upon Tyne, Northumberland, then of Peckham Rye Terrace, Surrey, but now of Liverpool Street, London, Merchant and Ship Owner. *Groom*, Off. Ass.; *Stephen*, Basinghall Street. Jan. 28.

PRICES OF STOCKS.

Tuesday 22d February, 1842.

Bank Stock div. 7 per cent.	- - -	170 $\frac{1}{2}$ a 604 $\frac{1}{2}$ 70
3 per Cent. Reduced	- - -	89 $\frac{1}{2}$ a 3 $\frac{1}{2}$
3 per Cent. Consols Ann.	- - -	88 $\frac{1}{2}$ a 9 $\frac{1}{2}$ a 9
3 $\frac{1}{2}$ per Cent. Annuities, 1818	- - -	99 $\frac{1}{2}$
3 $\frac{1}{2}$ per Cent. Reduced Annuities	- - -	99 $\frac{1}{2}$ a 3 $\frac{1}{2}$ a 3
New 3 $\frac{1}{2}$ per Cent. Annuities	- - -	99 $\frac{1}{2}$ a 3 $\frac{1}{2}$ a 3
Long Annuities, expire 5th Jan. 1840	- - -	12 $\frac{1}{2}$
Ann. for 30 yrs, exp. 10th Oct. 1859	12 $\frac{1}{2}$ a 7 $\frac{1}{2}$ a 3	
India Stock div. 10 $\frac{1}{2}$ per Cent.	- - -	217 a 6
Ditto Bonds 3 $\frac{1}{2}$ per Cent.	- - -	7s. a 84. pm.
South Sea Stock div. 3 $\frac{1}{2}$ per Cent.	- - -	98 $\frac{1}{2}$
3 per C. Cons. for Account 24th Feb.	- - -	89
Exchequer Bills 100l. a 24d.	- - -	20s. a 22s. pm.
Ditto 500l. do.	- - -	20s. a 22s. pm.
Ditto Small do.	- - -	21s. a 20s. pm.

The Legal Observer.

SATURDAY, MARCH 5, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agimus.

HORAT.

THE DOCTRINE OF NOTICE.

WHAT is constructive notice, is a subject of considerable difficulty. The general rule may be laid down to be, that whatever is sufficient to put the party charged with notice on inquiry, is good notice in equity,^a and notice of a deed is notice of the contents of that deed, so far as those contents affect the transaction in which notice of the deed is required.^b In a very recent case it was held by Sir J. Wigram, V. C., that the doctrine of constructive notice applies in two cases; first, when the party charged has notice that the property in dispute is incumbered, or in some way affected; in which case he is deemed to have notice of the facts and instruments, to a knowledge whereof he would have been led by due inquiry after the fact which he actually knew; and secondly, when the conduct of the party charged evinces that he had a suspicion of the truth, and wilfully or fraudulently determined to avoid receiving actual notice of it.^c In the same case, a party, before advancing money on a mortgage inquired of the mortgagor and his wife, whether any settlement had been made upon their marriage, and was informed that a settlement had been made of the wife's fortune only, and that it did not include the husband's estate, which was proposed as the security, and he afterwards advanced the mortgage money without having seen the settlement, or known its contents; and it was held that the mortgagee was not, under the circumstances, affected with constructive notice of the contents of the settlement, or of the fact that the settlement comprised the husband's estate.

^a *Smith v. Law*, 1 Atk. 489.

^b *Hamilton v. Royse*, 2 Sch. & Lef. 315;
Parry v. Wright, 1 Sim. & S. 372.

^c *Jones v. Smith*, 1 Hare, 43.

It is not necessary to give notice of an equitable incumbrance to more than one of several trustees of the property, so long as the circumstances of the case remain unaltered by the death of that trustee, his ceasing to continue such trustee or otherwise.^d The following observations of the same learned Vice Chancellor, in the same case, deserve attention.

"I conceive it to be now clearly decided, by the cases of *Dearle v. Hall*, 3 Russ. 1; *Loveridge v. Cooper*, Id. 30; and *Foster v. Blackstone*, 1 Myl. & K. 297; S. C. reported as *Foster v. Cockerell*, 9 Bligh. N. S. 332, that if a *bond fide* incumbrancer upon a fund, the legal interest in which is in a trustee, gives notice of his incumbrance to the trustee, and neither the incumbrancer giving the notice, nor the trustee at the time of such notice being given, has notice of any prior incumbrance affecting the fund, the incumbrancer giving such notice, so so long as the circumstances of the case remain unaltered, will be entitled to priority over a prior incumbrancer upon the fund, who has omitted or neglected to give notice of his incumbrance, although the puisne incumbrancer may have advanced his money without making any previous inquiries of the trustee. In the absence of notice, the party claiming the prior incumbrance has not perfected his title. In a case where there cannot be an actual transfer of the subject, he must do all that is in his power; and if he fails to do this, and another person takes an incumbrance and gives notice, the second person has acquired a perfect assignment, whilst the first equitable assignment is imperfect. The case of *Foster v. Blackstone*, for the first time, I believe, called for direct adjudication on the question, whether the omission of the second

^d *Meux v. Bell*, 1 Hare, 73.

incumbrancer to make the inquiry was to be treated as an objection of substance or not. In *Dearle v. Hull*, there having been in fact, an inquiry, the reasoning of Sir *Thomas Plumer* was rather an exposition of what he thought the doctrine of law to be, than a direct adjudication on the point. In the case of *Foster v. Blackstone*, the Lord Chancellor, in moving the judgment of the House of Lords, adverts and assents to the principle that a party, until he gives notice to the trustee, has not done every thing in his power, and which is necessary to complete his title. *Foster v. Cockerell*, 9 Bligh, N. S. 376. The reasoning of Sir *Thomas Plumer*, that the first incumbrancer, by omitting to give notice, has not acquired that which, in equity is equivalent to possession at law, and, therefore, his security is not perfected, is directly affirmed by the House of Lords, in a case where the very point was argued, and the distinction with regard to inquiry, taken by counsel at the bar; and where no inquiry was made, the second incumbrancer was preferred to the first, on the ground that the first incumbrancer had not perfected his security. I think these decisions are founded on principle. The omission of the puisne incumbrancer to make enquiry, cannot be material where inquiry into the circumstances of the case could not have led to a knowledge of the prior incumbrance."

LAWYERS IN PARLIAMENT.

THE rule laid down last session for exempting members, being cabinet ministers, from election committees, has been adhered to in the present session. Sir Robert Peel, Lord Stanley, Sir James Graham, and Mr. Goulburn have accordingly been exempted. Mr. Greene also, as Chairman of Ways and Means, and also Chairman of all Committees on Private Bills, has been excused. But we regret to say that a motion "That Mr. Granger have leave for five weeks to go the circuit," was put, and on the 22^d of February last, was negatived: If this motion has only been negatived as a matter of form, we have nothing more to say. If it be really the intention to have in view the convenience of barristers who must attend circuit, and appoint them to committees which are not fixed at these times, this is all that we wish; we do not desire to exempt lawyers from their fair share of the labour of committees; they have voluntarily sought seats in the House, and must abide the result. But if their convenience is in no way to be looked to, and their avo-

cations protected, we do sincerely deplore it. The tendency has certainly been, of late years, to exclude lawyers from the House of Commons. The Masters in Chancery, it is said, are now excluded from English seats by the recent change in their office; the Judge of the Admiralty was excluded by an express act. The Master of the Rolls has not sat there since the time of Sir *John Copley* (now Lord Chancellor) and we have in this last resolution another limitation of the rights of the profession. We must say we look upon this with concern. The number of lawyers now in Parliament is smaller, we venture to say, than at any period since the *parliamentum indocum*, in 1405. There is only one of the leaders of the Chancery Bar in the present Parliament, and independently of the Attorney and Solicitor General, there is hardly more than one eminent man of the common law bar there. For what we know, this may be matter of exultation with some; but we conceive no person of reflection can view it but with regret. Legislation, let us be assured, cannot proceed safely except with legal aid, and when we consider how few eminent men at the bar now chuse to encounter the uncertainty of a contested election, we feel some alarm. We would not have too many lawyers; we would have a preponderance of gentlemen and merchants; but if this disposition to exclude legal assistance, and harass those who are able and willing to give it, is to prevail, we conceive the consequence will, sooner or later, be very serious to the common weal.

PRACTICAL POINTS OF GENERAL INTEREST.

PARCEL BY RAILWAY.

A CASE of some interest has recently occurred with respect to carriage by railway—for the principle applies equally to injury to persons as to parcels. A parcel was delivered at Lancaster and Preston Junction Railway Company, directed to a person at a place in Derbyshire. The person who brought it to the station offered to pay the carriage, but the book-keeper said it had better be paid by the person to whom it was directed, on the receipt of it. The Lancaster and Preston Junction Railway Company were known to be proprietors of the line only as far as Preston, where the railway unites with the North Union Line, and that afterwards with another, and so on into Derbyshire. The parcel having been lost, after it was forwarded from Preston, it was held that the Lancaster and

Preston Railway Company were liable for its loss. "It is admitted," said Lord Abinger, C. B., "by the defendant's counsel, that the defendant's contract to do something more with the parcel, than merely to carry it to Preston; they say the engagement is to carry to Preston, and there to deliver it to an agent, who is to carry it further, who is afterwards to be replaced by another, and so on till the end of the journey. Now that is a very elaborate kind of contract; it is, in substance, giving to the carriers a general power along the whole line of route, to make at their pleasure, fresh contracts, which shall be binding upon the principal who employed them. But if, as it is admitted on both sides, it is clear that something more was meant to be done by the defendants than carrying as far as Preston, is it not for the jury to say what is the contract, and how much more was undertaken to be done by them?" [The jury had found for the plaintiff.] "It is better that those who undertake the carriage of parcels for their mutual benefit, should arrange matters of this kind *inter se*, and should be taken each to have made the other their agents to carry forward;" and Mr. Baron Rolfe, before whom the cause was tried, said—"What I told the jury was only this, that if a party brings a parcel to a railway station, which in this respect is just the same as a coach office, knowing at the time that the company only carry to a particular place; and if the railway company receive and book it to another place, to which it is directed, *prima facie* they undertake to carry it to that other place." "If I took my place at Euston Square, and pay to be carried to York, and am injured by the negligence of somebody between Euston Square and York, I do not know why I am not to have my remedy against the party who so contracted to carry me to York." *Muchamp v. Lancaster and Preston Junction Railway Company*, 8 Mee. & Wels. 421.

UNSTAMPED MEMORANDUM.

In *Mercer v. Jones*, 3 Camp. 477, Lord Ellenborough said,—"In trover the rule is, that the plaintiff is entitled to damages equal to the value of the article converted at the time of the conversion." In an action of trover for an unstamped instrument, whereby the defendant agreed to guarantee to the plaintiff payment for "half the amount of certain fixtures, say about 100*l*." (which memorandum the defendant withheld from the plaintiff, having obliterated

his own signature,) the jury gave an unqualified verdict for 100*l*. A motion was made for a new trial, on the ground that the memorandum being unstamped, was worthless, and therefore the damages excessive, and that the judge ought to have directed the jury to find a verdict in the alternative, to be reduced to nominal damages, on the memorandum being given up. But this was refused, *Tindal, C. J.*, saying—"The guarantee, as I read it, is a guarantee to the extent of 100*l*. I think the defendant has no right to complain of the verdict: he has brought it upon himself by his own act in wantonly mutilating the instrument, and after all, it is only another mode of recovering upon the undertaking." *M'Leod v. M'Shie*, 2 Scott, 604.

THE PROGRESS OF LAW REFORM.

ASSUREDLY we said right, that the present session would be an important one in the history of law reform. There are, certainly, now a sufficient number of legal bills before parliament.

There are no less than three bills for establishing local courts,—Lord Brougham's, of which we gave an analysis in the first number of this work, nearly twelve years ago; Lord Cottenham's, which we have much more recently printed, and the Lord Chancellor's, not yet introduced. Lord Brougham's ranges as high as debts of 20*l*., and damages laid at 50*l*. Lord Cottenham is confined to claims of 20*l*., and the Lord Chancellor is to go still lower, and to be limited to demands under 15*l*. We shall be able to discuss this question more completely when we have this latter bill in our possession; but so far as we have heard, the plan mentioned by it we are not disposed to agree to. We do not wish to break up the present system of administering justice. If the scheme is confined to recovering debts of small amount, we see no objection to it, more especially as the various bills for establishing small debts courts, which pass every session, render some general measure almost indispensable; but if it is to go further than this, we shall undoubtedly oppose it. All the objections which we have formerly urged, appear to us to be as forcible as ever, and we shall take the proper opportunity of re-stating them.

Lord Campbell, on Tuesday last, detailed his plan for the reform of the appellate jurisdiction of the House of Lords and the Privy Council; and we are glad to say that it appears to us to be the true plan. How

far Lord Campbell has been happy in the time which he has taken to introduce it, remains to be seen; but as the scheme which he has proposed has, for many years, been recommended in these pages, it is not for us to object to this, and sooner or later, we believe, it will become the law of the land. The plan is to transfer the admiralty, colonial, and ecclesiastical appeals from the Judicial Committee to the House of Lords, and there to have but one general appellate Court of the last resort; that the Lord Chancellor should preside in this Court, and that a permanent Judge should be placed in the Court of Chancery. We believe that this plan has already received the approbation of the profession, and we shall probably hereafter advert to it more fully.

NEW BILLS IN PARLIAMENT.

QUEEN'S PRISON.

THIS is a bill for consolidating the Queen's Bench, Fleet, and Marshalsea Prisons, and for regulating the Queen's Prison.

It recites that the Prison of the Marshalsea of the Court of Queen's Bench is a prison for debtors and for persons confined under the sentence or charged with contempt of her Majesty's Court of Queen's Bench. And that the Fleet Prison is a prison for debtors and bankrupts, and for persons charged with contempt of her Majesty's Courts of Chancery, Exchequer, and Common Pleas. And that the prison of the Marshalsea of her Majesty's household is a prison for debtors and for persons charged with contempt of her Majesty's Courts of the Marshalsea, the Court of the Queen's Palace of Westminster, and the High Court of Admiralty, and also for Admiralty prisoners under sentence of courts martial. And that by 1 & 2 Vict. c. 110, for abolishing Arrest on Mesne Process in Civil actions, except in certain cases; for extending the remedies of creditors against the property of debtors, and for amending the laws for the relief of insolvent debtors, arrest on mesne process in civil actions was abolished, except in certain cases, and further provision was made for the relief of insolvent debtors; by reason whereof the prison of the Court of Queen's Bench is sufficient to contain all the persons who are now imprisoned within the said several prisons, or who will be hereafter taken in execution of process of the said several courts. It is therefore proposed to be enacted:

1. That the prison now known as the prison of the Marshalsea of the Court of Queen's Bench, shall be called the Queen's Prison, and shall be the only prison for all debtors, bankrupts or other persons who before the passing of this act might lawfully have been imprisoned in any of the said prisons of the Marshalsea, of the Court of Queen's Bench, the Fleet Prison, or

the prison of the Marshalsea and of the Court of Queen's Palace of Westminster, and after the passing of this act no person shall be committed from any of the said courts elsewhere than to the Queen's Prison, and that the persons therein imprisoned shall be there in the custody of the marshal or keeper of the Queen's Prison, from whichever of the said Courts they shall have been severally committed; and all securities taken from any officer of the Queen's Bench Prison for performance of his duty respecting the prisoners now confined in the Queen's Bench Prison shall enure for securing the performance of the like duty respecting the prisoners who shall be confined in the Queen's Prison under this act; and all rules, orders and enactments now in force respecting the Queen's Bench Prisons and the prisoners therein shall be taken to apply in all respects to all the prisoners who shall be confined in the Queen's Prison, subject to the provisions hereinafter contained: Provided always, that until the removal of the persons now imprisoned in the Fleet prison and prison of the Marshalsea and of the Court of the Queen's Palace of Westminster, as hereinafter provided, such persons may be lawfully detained within the prison in which they are now severally confined and shall be there in the same custody and subject to all the rules now in force respecting such prisoners as if this act had not been made.

2. That within one calendar month after the passing of this act, the warden of the Fleet Prison, and the keeper of the prison of the Marshalsea and of the Court of the Queen's Palace of Westminster, shall severally certify under their hands to the Lord Chief Justice of the Court of Queen's Bench a true list of the names of the prisoners then in their custody, with the several causes and times of their commitments; and as soon thereafter as the Queen's Prison can be conveniently made ready for the reception of the prisoners to be removed under this act, the Lord Chief Justice of the Court of Queen's Bench shall issue his warrant or warrants from time to time, under his hand, severally directed to the warden of the Fleet Prison, and to the keeper of the prison of the Marshalsea and of the Court of the Queen's Palace of Westminster, requiring them severally to deliver into the custody of the Marshal of the Queen's Prison, the persons then in their custody, or such of them as shall be named in any such warrant; and upon the receipt of any such warrant, the said warden and keeper shall severally deliver into the custody of the Marshal of the Queen's Prison, the persons named in the said warrant, with the several warrants of commitment of such persons delivered, and the marshal of the Queen's Prison shall forthwith convey the prisoners so delivered into his custody to the Queen's Prison; and if any person named in any such warrant of the Lord Chief Justice shall have been lawfully discharged out of the custody of the said warden or keeper before the execution of the warrant, the said warden or keeper shall certify the fact under his hand to the

said Lord Chief Justice, and shall deliver such certificate to the Marshal of the Queen's Prison, and the removal of any such prisoners in obedience to the warrant of the Lord Chief Justice as aforesaid shall not be construed to be an escape.

3. Abolition of offices of Fleet and Marshalsea Prisons.

4. Sheriffs' payment of 7*l.* 12*s.* 1*d.* and 10*l.* 12*s.* continued.

5. Officers whose offices are abolished, may make claims for compensation.

6. Salaries now paid out of civil list to be retained as part of consolidated fund.

7. Discontinued prisons declared to be vested in the crown.

8. Sums payable for the relief of poor prisoners to be paid to the treasurer of the county of Surrey. 53 Geo. 3, c. 113.

9. Repeal of part of 53 Geo. 3, c. 113, ss. 10, 11.

10. Appropriation of charitable gifts and bequests for the benefit of the prisoners in the Queen's prison.

11. Prisoners' fees on entrance, discharge, &c., abolished, 55 Geo. 3, c. 50.

12. *Abolition of the liberty of the rules.*—That it shall be not lawful for the marshal or keeper of the Queen's Prison to grant the liberty of the rules to any person, except for the purpose of continuing the liberty of the rules of the Queen's Bench Prison, to those persons who shall be in the enjoyment of the liberty of the rules of the Queen's Bench or Fleet Prison at the time of the passing of this act; and that all persons in the custody of the marshal or keeper, to whom the liberty of the rules of one of the said prisons shall not have been granted before the passing of this act, and also those persons to whom such liberty shall have been granted before the passing of this act, after the next determination of such liberty, shall be confined within the walls of the Queen's Prison, and that it shall be deemed an escape if any such prisoner be suffered to go beyond the walls of the prison.

13. That if the marshal of the Queen's Prison shall think fit to grant the liberty of the rules of the Queen's Bench Prison to any person who at the time of the passing of this act shall be in the enjoyment of the liberty of the rules of the Fleet Prison, and shall be removed into the custody of the said marshal under this act, the said marshal shall not exact any fee from such person for granting such liberty, and the securities to be entered into and executed in favour of the said marshal, for assurance that such person will not escape out of the custody of the said marshal shall not be liable to any stamp duty.

14. Rules to be made by secretary of state.

15. Repeal of 27 Geo. 2, s. 17.

16. *Appointment of Officers.*—That after the next vacancy of the office of marshal of the Queen's Prison, the person having the custody of the said prison shall be called the keeper of the Queen's Prison, and one of her Majesty's Principal Secretaries of State shall appoint, and at his pleasure may remove, the keeper of

the Queen's Prison, and that the offices of Deputy Marshal and clerk of the day-rules shall be abolished upon the next vacancy thereof, and that the clerk of the papers shall be thereafter empowered to act as deputy keeper in case of the illness or unavoidable absence of the marshal or keeper, and that the secretary of state shall appoint, and at his pleasure may remove, a chaplain and surgeon for the said prison, and that the marshal or keeper, subject to the approval of the secretary of state, shall appoint and may remove the clerk of the papers and a matron, and such other officers and servants as may be necessary for the service and discipline of the prison: provided always, that no keeper of the Queen's Prison hereafter to be appointed shall enter upon his office until he shall have given good and sufficient security to the Queen's Majesty, her heirs and successors, for his good behaviour in the said office, such security to be approved by the Lord High Treasurer, or by the commissioners of her Majesty's Treasury, and to be for such amount as he or they from time to time shall think fit.

17. Amount of salaries.

18. Salaries, how paid.

19. Salaries and allowances defrayed from the consolidated fund.

ABSTRACT OF LORD BROUGHAM'S LOCAL COURT BILL.

I. *Constitution of the Local Court.*

1. A judge in ordinary to be appointed for each district, with registrar, clerk, and other officers; the judge not removeable; the registrar during good behaviour; Court a Court of Record. Sects. 1, 2, 3, 4, 5, 6, 7, 8.

2. Judge to be *ex officio* justice of peace. Sect. 8.

3. All the functionaries to be paid by salary alone. Sects. 10, 11.

4. Fees to be settled by Courts of Westminster, and how to be disposed of. Sects. 10, 11, 12, 13.

5. Practitioners; actions by attorneys. Sects. 12, 14.

II. *Jurisdiction (Ordinary).*

1. The Court to have cognizance of actions of debt, whether by specialty or simple contract, and of trespass for taking goods to the extent of 20*l.*; actions of personal tort, and in the nature thereof, as assault,—battery,—false imprisonment,—slander,—libel,—seduction,—criminal conversation,—false representation of character, solvency, or property,—malicious prosecution, arresting, or suing out commission of bankrupt,—or any other tort whatever to person or personal property, to the extent of 50*l.*, not of title to land, tithe, toll, market, fair, or other franchise, unless both parties consent to such jurisdiction. Sect. 15.

2. The Court to have cognizance of all actions whatsoever, and to any amount, by consent of parties, to be given as specified. Sec. 16.

3. Jurisdiction in respect of districts and

parties; exclusion of the jurisdiction of the superior courts and courts of conscience and requests. Sects. 17, 18, 19, 20.

III. *Procedure (Ordinary).*

1. Demand; notice; service. Sect. 21, 22, 23.
2. Answer; default; tender. Sects. 24, 25, 26, 46, 47.
3. Forms of pleading. Sect. 27, and Schedule A.
4. Fine and postponement. Sect. 28.
5. Power of parties to examine one another. Sects. 29, 30.
6. Sittings and circuits of court. Sects. 2, 31.
7. When to try with and when without jury. Sects. 32, 33, 34.
8. Proceeding by jury. Sects. 35, 36, 37, 38, 39.
9. Witnesses. Sects. 40, 41, 42, 43.
10. Documentary evidence. Sect. 44.
11. Proceedings in taking accounts. Sect. 45.
12. Judgment; execution; judgment to pay by instalments; discovery of debtor's property. Sects. 48, 49, 50, 51, 52, 53, 54.
13. Appeal on matter of law. Sects. 55, 56, 57.
14. Rules of practice settled by Courts of Westminster. Sect. 58.

IV. *Jurisdiction and Procedure in Reconciliation.*

1. Judge in ordinary to hold Court of Reconciliation. Sect. 59.
2. Citation; notice; default. Sects. 60, 61, 62.
3. Proceedings; costs. Sects. 63, 64, 65.

V. *Jurisdiction and Proceedings in Bankruptcy.*

1. Local Court to act under the provisions of the new bankrupt law. Sects. 66, 69.
2. Addition of other commissioners in case of illness of judge and registrar. Sects. 67.
3. Official assignees. Sects. 70, 71, 72.
4. Appeal on commitment. Sects. 73, 74.

VI. *Jurisdiction and Procedure in Equity.*

1. Accounts and other inquiries may be sent by Court of Chancery to Local Court. Sect. 76, 77.
2. No appeal from order sending the same. Sect. 78.
3. Procedure; examination of witnesses and parties; report; exceptions; directions; Sects. 79, 80, 81, 82, 83, 84, 85, 86.
4. Procedure in taking oaths; examinations; pleas; answers; depositions. Sects. 87, 88, 89, 90, 91, 92, 94, 95.
5. Rules and orders of practice to be made by Court of Chancery. Sects. 93, 95, 96, 97.

VII. *Limitation and Construction clauses.* Sects. 98, 99, 100, 101.

PARLIAMENTARY RETURNS OF CHANCERY CAUSES.

THE following is extracted from a return just made to the House of Lords:

The number of causes (exclusive of those before the Master of the Rolls) <i>ready for hearing</i> on the 2d November, 1841, the first day of Michaelmas Term ..	508
The like on the 2d December, 1841, the first day of sittings after Michaelmas Term	366
The like on the 11th January, 1842, the first day of Hilary Term	314
The like on the 8th February, 1842, the first day of sittings after Hilary Term	217
The number of new causes <i>set down</i> between the 2d November, 1841, and the 8th February, 1842	203
The number of new causes set down from the 8th February, 1842, to the 19th February, 1842, inclusive	32
The number of causes <i>ready for hearing</i> on the 19th February, 1842, including all the new causes set down since the 2d November, 1841	132

In the above return those causes which are marked "abated," or "stand over," are omitted, as well as the revived and supplemental suits, and the causes specially directed not to come on for hearing until after the present sittings.
25 February, 1842.

DUBLIN LAW INSTITUTE.

A NUMEROUS meeting of the members and friends of the Dublin Law Institute took place on the 31st January, at which several of the judges and other dignitaries of the law attended.

Mr. *Tristram Kennedy*, the principal of the Institute, delivered an able address, from which we make the following extracts:—

"The society of the Dublin Law Institute, having now reached its third year, it shall be my very gratifying duty to lay before you a review of its progress, its objects, and its results, from the date of its foundation as a public institution. It had its early struggles and difficulties, but these were of shorter duration than might have been reasonably anticipated; for no sooner were its objects fully scanned and its merits thoroughly understood, than it received the sanction of those individuals, whose fostering encouragement has enabled it to reach its present position. Those supporters were not confined to the youthful or unenlightened students, who would have had direct and personal interest in the establishment as a means of acquiring instruction. They were also the master-minds of the legal profession, whose success no difficulty had been able to impede—whose perseverance had

surmounted each perplexing obstacle—but whose manly and honourable feelings enabled them to hail, with disinterested approbation, the foundation of an institution for directing the studies of those embarking in legal pursuits, to rejoice in the first attempt made in this country to teach law as a science. They could not avoid lamenting that in their younger days there was no institution of this description of which the law student might have availed himself. And whilst they deplored the enormous waste of time they had suffered in their own early reading, they rejoiced that the institution would relieve all future students availing themselves of its advantages, from this loss. That it would contribute to the respectability and efficacy of the Irish bar, and that it would afford to the community in general, the means of acquiring a knowledge of the laws and constitution of the country. The professional school or institute of the society has passed the ordeal of a second session. It is known to the public. It has stood the severe and criticising test of professional opinion. It has gained new and valuable supporters. It has preserved the confidence of the enlightened and intellectual friends who approved of its foundation.

The institute presents to students the aid of six experienced professors, approved of by the benchers, and known to both the profession and the public. The synopsis published of the courses of instruction, renders unnecessary my dwelling upon the plans pursued in the institute; suffice it now to observe that, students and members of the bar who attend the first, I might add experimental, course of instruction in the institute, have evinced by attendance a second and a third year, that the time thus dedicated was not altogether misapplied. How very different a system the institute presents to that so quaintly described by Roger North in his discourse on the study of the laws. "Such," says he, speaking of the novice, "as are willing and inquisitive, may pick up some hints of direction; but generally the first step is a blunder, and what follows loss of time; till even out of that, a sort of righter understanding is gathered, whereby a gentleman finds how to make better use of his time and of those who are so civil as to assist a novice with their advice what method to take; few agree in the same; some say one way, some another, and amongst them rarely one that is tolerably good. Nor is it so easy a matter to do it that every one should practise to advise, for most enter the profession by chance, and all his life after is partial to his own way, though none of the best." The necessity that existed for a system of instruction for the youthful lawyer, was met in ancient Rome by the houses of the elder lawyers being with them, the schools for the youth intended for the bar. "We shall see," remarks Quintilian, "a whole company of studious young people frequenting his house and consulting him upon the proper methods of speaking; he forms them as though he were the father of eloquence, and like an old expe-

rienced pilot points out to them the course they ought to steer, and the rocks they must shun, when he sees them ready to set sail." Here, then, is the secret of the lasting reputation of Roman lawyers, constituting them the studies of excellence even of the present day. The young men had the benefit of studying the best models, not only in the principles of law, but also in the art of conveying this knowledge. Is it to be wondered then, that they learned (in the words of St. Austin,—"Sapienter dicere, eloquentur dicere." The beneficial influence this society has produced, is evinced in a variety of channels, and we have the satisfaction to know, that this fact has been most frankly admitted by some of the most distinguished judges of the land.

The claims of the society do not rest here; the institution has been founded in accordance with the suggestions and recommendations contained in the report from the select committee of the House of Commons on education in 1838, in which report the committee state it as their opinion (after three years' deliberation) that institutions of this nature should be established and maintained at the joint cost of the profession and of the state. The society itself consists of the most distinguished and elevated members of the several professions; the system of its working is under the controul of a council selected from the bar, whose names alone offer sufficient guarantee for the worth and efficacy of the plans.

Let it not be supposed however that this institution has been looked upon with apathy by other learned bodies. Those distinguished individuals whose more especial province it is to elevate the standard of legal knowledge, and afford to the profession the advantages of this paternal superintendence, actuated by that purest and most liberal principle of encouraging in others the pursuit they themselves have been devoted to with honor and success; the laurels they have won they desired should be preserved unwithered in succession, and following the brilliant examples set by Hortentius and Cicero from the very outset—the infant struggles of our society have been carefully watched, and our exertions stimulated by the parental advice of many of the most enlightened benchers of the *Society of King's Inns*; and when at length the learned body itself was convinced, after watching our early career, that it was for the interest of the profession of which they were guardians, that the institute should have the sanction of their body, sinking all unworthy feelings, with a liberality that rarely influences incorporated societies, the benchers of the *King's Inns*, to their honor be it spoken, have not only given to the institute the advantage of their approval—they have united with us in the noble and important enterprise—they have become fellows of our society—they have given a substantial mark of their desire for the continuance of the system by endowment of the institute. The approbation received has not been merely local or the result of any national obligation.

From the highest legal quarters in England, we have been cheered on to exertion. From the benchers of *Lincoln's Inn*, London, we have received the warmest expressions of encouragement; they have also, by an endowment, extended our means of effecting the object which they thus approved. To this I may add, what I am sure will gratify my fellow labourers in our common undertaking, that I am to day afforded an opportunity of conveying to them the pleasing intelligence that the Society of *Gray's Inn* have also afforded a golden proof of their approbation in a donation of one hundred guineas, a sum similar to that presented by *Lincoln's Inn*. To establish a mere school of law for professional men, though a most responsible and desirable undertaking, has not been the restricted object sought by this society. We have likewise desired to facilitate generally the acquisition of legal knowledge—to raise jurisprudence from amongst the mercenary arts of a particular community, and give it a place along with the liberal sciences interesting to the whole family of mankind. With Burke we desire to see jurisprudence made the pride of the human intellect; the collected reason of ages, combining the principles of original justice with the infinite variety of human concerns.

We have selected these passages from the principal's address, in order to shew the successful progress of the Institution.

MQOT POINTS.

MARRIAGE IN WRONG NAME.

In reply to this point, I beg to refer to the 4 Geo. 4, c. 76, s. 22, and to the decision of *Rea v. Wroston*, 4 B. & A. 640, thereon. There the intended husband procured the banns to be published in a christian name and surname which the woman had never borne, but she did not know that *fact* until after the solemnization of the marriage, and it was held that the marriage was valid. Lord Denman, in delivering the judgment of the Court, stated, that in order to render a marriage void under the above mentioned enactment, it must have been contracted by both parties, with a knowledge that a due publication of banns had not taken place.

LECTOR.

BANKRUPTCY DIVIDENDS.

In answer to "A Subscriber," p. 189, *ante*, I am inclined to think the assignees of B. cannot refuse to pay the holders a dividend on the whole amount, as they are entitled to such dividend, provided that with the sum received of the acceptor, it does not exceed 20s. in the pound; and in support of this opinion I beg to refer to the following cases, viz., *Ex parte King*, Cooke, 177; *Smith v. Knox*, 3 Esp. 46; *Ex parte Dyer*, 6 Ves. 9; *Ex parte de Tustet*, 1 Rose, 10, cited in the 3d edit. of Archbold on the Bankruptcy Laws, p. 77. S. P. R.

ASSUMPSIT.—ENTIRETY OF CONTRACT.

A. B. agreed with C. D. that he would make certain articles according to a verbal agreement. A. B. makes the articles, but they differ from the agreement. C. D. refuses them. An action of assumpsit has been brought to recover 25*l.* from C. D. Is A. B. entitled to recover the 25*l.*, or any less sum?

The cases on this point are discordant, and the question turns on the entirety of the contract. In *Sinclair v. Bowles*, 9 B. & C. 92, it is stated, that where the contract is entire, assumpsit will not lie. In the 1st Vol. 10th ed. of Sug. V. & P. 405, it is laid down that if A. covenant with B. to build a house for him according to a certain plan, and B. covenant with A. to pay for the house so built, that if A. build a house, although not strictly according to the plan, yet B. must pay for it. I should be glad to know the inference to be drawn from these cases. HOMO.

BENEFICE.

A. being possessed of an advowson, by his will bequeathed the next presentation to B., (his son, who was in the church) after the death of A., and during the life of C., (the Incumbent). B. sold that presentation, and shortly after died. C. being lately dead, D., (the person who succeeded to the estate and advowson upon the death of A.) now claims the right of presentation, and states that B. having died in the life-time of C., the former had no power to sell the presentation.

A SUBSCRIBER.

SELECTIONS FROM CORRESPONDENCE.

CERTIFICATE DUTY.

1. May not a London attorney, who has taken out his certificate and paid the higher duty of 12*l.*, change his place of residence during the year, and practise in any part of England, without taking out a fresh certificate?

2. May not a country attorney, who has paid the lower duty of 8*l.*, change his residence and practise in any part of England for the remainder of such year, (except in London, Westminster, and within the limits of the two-penny post, or within the city of Edinburgh), without taking out a fresh certificate for such new place of residence?

3. In case a country attorney removes during the year to London, must he pay the additional duty of 4*l.* only, or must he take out a fresh certificate and pay 12*l.*?

AN OLD SUBSCRIBER.

[To the first and second questions we think there can be no doubt that the attorney may practise as suggested, under the existing certificate. As to the third point, we think he must pay the whole town duty, and we doubt whether the commissioners have power to return the duty on the country certificate. ED.]

ence arising from the uncertainty in the construction of some of the last new orders in Chancery. I refer more particularly to order No. 23, which directs that "where no account, payment, conveyance, or other direct relief is sought against a party to a suit, it shall not be necessary for the plaintiff to require such party, not being an infant, to appear to and answer the bill, but the plaintiff shall be at liberty to serve such party, not being an infant, with a *copy of the bill &c.*;" and this order proceeds to say, that such party, upon being served with a copy of the bill, shall be bound by all the proceedings in the cause.

Now there seems to be a difficulty as to the meaning of this word "copy," whether a copy by the solicitor is intended, or an *official* copy of the bill filed, and as far as I can learn, no one can give any information upon the subject.

The six clerks plead ignorance, and are unwilling to advise, and counsel say that the question must come before the Court before it will be safe to act under this order. From this state of things, great delay and inconvenience must necessarily ensue, and I have a case at the present time completely at a stand still from this circumstance. It is said that a difference of opinion exists between two of the learned Vice Chancellors, as to the sort of copy intended.

A CONSTANT READER.

[As expence was intended to be saved by the new Order, it would seem that the object of the judges would be better promoted by letting the solicitor make the copies; his charge being 4*d.*, and the office copy 10*d.* per folio. Ed.]

LEGAL DISCUSSION SOCIETY.

Sir,

As the attention of the rising part of our profession seems just at present to be busily engaged with the proposed establishment of a society for the discussion of legal subjects, allow me to suggest, through the medium of your pages, that some immediate steps ought to be taken while the matter continues an object of interest, and also to make public a plan I have heard well recommended, and to which I conceive there can be no objection.

The society, after being formed in the usual manner, with a president, committee, secretary, &c. should meet periodically at some suitable place, (perhaps a room in the Law Institution might be obtained for the purpose) for the discussion of subjects connected with both the principles and practice of each branch of the law. At these meetings one or more of those members who from their longer standing in the profession—their having been chiefly confined to any one particular branch of it—or from any other circumstance, are most

argue in support of and against the point raised; and the president should then, after due consideration, and either at that or the succeeding meeting, state his decision, and quote the authorities on which it is founded. Of course, stringent regulations should be framed to provide for the appointment of suitable members as presidents, and to allow each member in turn an opportunity of bringing forward a subject for discussion, provided such subject had received the previous approval of a certain number of members, or of a committee appointed for the purpose of inquiring into what is proposed to be argued, in order to prevent the time of the meeting being occupied with unnecessary or trifling disputation.

In addition to this, each member should also be at liberty to read an essay of his own compilation on some branch of the law (such essay either having been previously submitted to a scrutiny similar to the one referred to, or not, as may be deemed most expedient); and the essay might, on a subsequent occasion, be again read for general discussion, so as to allow each member an opportunity of assenting to, or dissenting from, the positions laid down in it.

The above is a brief summary of the plan I have alluded to, and it cannot be doubted that a society formed upon it, or in some similar manner, would have the effect of forming habits of industry in the student, of rendering the habit of public speaking easily attainable, and in fine, of producing many advantages so obvious as not to need enumerating. What, therefore, I have to propose is, that a meeting of law students and articled clerks should be immediately convened to deliberate upon the most desirable method of carrying this object into effect; and I have sufficient confidence in the judgment and energy of this part of our profession, to think that a scheme of some kind or other would then be adopted and acted upon without delay. Only let the matter be taken up in a proper and spirited manner, and it is sure to succeed.

AN ARTICLED CLERK.

I beg to suggest that those students who are desirous of becoming members of the society, will signify such their intention by leaving at the Legal Observer Office their respective names and address, so that when there is a sufficient number of candidates, they may be individually written to, appointing a meeting to be held at some fixed locality, in order effectually to carry out the objects we have in view.

H. H. P.

[Our publisher is willing to accommodate the parties by keeping a book for the names of subscribers. Ed.]

SUPERIOR COURTS.

Lord Chancellor.

EVIDENCE.—ATTORNEY AND CLIENT.—
PRIVILEGED COMMUNICATIONS.

Wherever an attorney is professionally consulted by a client in respect of any business, all the communications that pass between them relating to that business are privileged; and it is not material whether these communications had reference to a cause or not.

One of the contested points in this case was, whether Mrs. Herring knew the effect of a deed at the time of its execution, by which she settled certain real estate in the county of Cornwall on the issue of her daughter.

Mr. Wright, of counsel for the defendant, in reading the evidence at the hearing, proposed to read the examination of Mr. Pearse, who had been Mrs. Herring's solicitor at the preparation and execution of the deed, for the purpose of supporting the defendant's case, that she knew its contents and effect.

Mr. Wakefield objected.—Mr. Pearse having been Mrs. Herring's solicitor at the time of the execution of the deed, his examination was for that reason inadmissible. All professional communications between client and solicitor are privileged, and the privilege not confined to communications made in the course of a case, or with a view to a cause, as was laid down in some reported cases, but extended to all cases where a party applies for professional assistance. *Cromack v. Heathcote*,^a *Walker v. Wildman*.^b Lord Tenterden is said in one or two cases to have tried to remove the privilege to communications in actions pending or about to be brought. *Williams v. Mudie*,^c *Wordsworth v. Henshaw*.^d That doctrine, however, if ever laid down, was not followed. It was brought under review in the case of *Doe dem. Shellard v. Harris*,^e where Baron Parke, after hearing all the cases cited to him, held that all applications by a client to his attorney were protected; and he there mentioned that the rule was so settled by the Lord Chancellor (Lord Brougham), the two Chief Judges and Chief Baron, the Lord Chancellor having, with reference to the case of *Greenough v. Gaskell*,^f taken the opinion of the Chief of the Common Law Courts.

Mr. Wright, *contra*, referred to several *nisi prius* cases, as *Duffe v. Smith*,^g *Du Barre v. Levette*,^h and the cases before Lord Tenterden above mentioned, and argued that solicitors were not, any more than other persons restrained from giving evidence in matters, the knowledge of which is not communicated to them in consultations about a pending suit.

The Lord Chancellor said, the question was of very great importance, and he would take time to look into the cases. The cause might

be proceeded with in the mean time, reserving the point.

On a subsequent day, his Lordship said, he had looked into the cases that were cited, and he was clearly of opinion that the proper principle was that which was acted on in *Cromack v. Heathcote*; that is, that all consultations between attorney and client in a professional sense are privileged. In several cases that were cited, it would appear that Lord Tenterden was disposed to limit the protection to consultations in a cause, or with a view to the institution of a suit; and in one case Lord Wynford seemed to be inclined to adopt Lord Tenterden's opinion. But the distinction taken in these cases is not supported by other authority, nor consistent with the principle of the rule as generally acted on; for it is as material that consultations relating to a client's property should be entitled to protection as much as if they had taken place in a cause in Court. It is consistent with policy to protect them. If the question arose now for the first time, I would adhere to the case before the Court of Common Pleas, (*Cromack v. Heathcote*), in preference to the case decided by Lord Tenterden. But the principle was well established—it was well considered in this court by Lord Chancellor Brougham, (*Greenough v. Gaskell*), who, adopting the principle of the cause in the Common Pleas, decided that any matter that came to the knowledge of a solicitor in the conduct of professional business for his client, even though it had no reference to legal business existing or in contemplation, was a privileged communication. The question came before the late Lord Chancellor, and he followed the same rule, which is this, that all communications between client and attorney in the course of professional business, are entitled to privilege; and it is the privilege of the client and not of the attorney. It is easy to apply that rule to Mr. Pearse's evidence, and to reconcile it with the decision of the Vice Chancellor. Wherever an attorney is professionally consulted by a client relating to the client's business, all the communications that pass between them relating to that business is privileged. The best way in this case is to hand up all the depositions on both sides, unmarked, and leave it to myself to see what comes within the privilege thus laid down, and what does not.

Herring v. Cleobury, at Lincoln's Inn, Feb. 9th and 12th, 1842.

Rolls.

PRACTICE.—PRODUCTION OF DOCUMENTS.

In a suit instituted for the purpose of setting aside conveyances, alleged by the bill to have been fraudulently obtained, the Court will, on the application of the plaintiff, order their production, if admitted by the answer to be in the defendant's possession, although the allegations of fraud are denied, provided sufficient appears upon the face of the answer to make out a case of suspicion.

The bill in this case was filed for the pur-

^a 2 Bro. & B. 4.

^c 1 Car. & P. 158.

^e 5 Car. & P. 592.

^g Peake, 140.

^b 6 Madd. 47.

^d 2 Bro. & B. 5.

^f 1 Myl. & K. 98

^h Ibid. 108.

pose of setting aside certain conveyances when the plaintiff alleged had been improperly obtained from him by the defendant, who was his nephew and heir at law, under false inducements, and for grossly inadequate considerations. All the allegations of fraud were denied by the defendant, who entered into various explanations for the purpose of shewing that he had always been treated by the plaintiff as his adopted child,—that he had frequently assured the defendant's mother that he intended to leave all his property to him,—that in proof of his intention the plaintiff made a will in 1825, in the defendant's favor, and that the plaintiff had only altered his views in consequence of his recent marriage. The defendant by his answer admitted having in his possession the conveyances in question, together with the title deeds belonging to the estates, and

Moore now moved for the production of those deeds, and contended, that the plaintiff being upwards of seventy years old when the conveyances in question were executed, was liable to be influenced improperly by the defendant, and that sufficient appeared upon the face of the answer to call upon the Court to assist the plaintiff in the enquiries sought for by him.

Turner, contra, insisted that as all the allegations of fraud were denied by the answer, the Court would not interfere, unless there were such suspicious circumstances as to induce a belief that the plaintiff would eventually succeed in establishing the case stated by the bill, which he contended there was no probability of his doing in this case. He referred to *Tyler v. Drayton*, 2 Sim. & Stu. 309.

The *Master of the Rolls* said, he perfectly agreed, that if there was an allegation of fraud in the bill, and an express denial of such fraud in the answer, and there were no circumstances stated to induce the Court to doubt the fairness of the transactions sought to be impeached, there would be no ground for requiring the production of documents in the defendant's possession. At the same time it was not necessary for a plaintiff to prove fraud, or an admission of fraud, to entitle him to such production, for the Court would look to all the circumstances, and if it were satisfied that a case of suspicion was made out, would grant the application. Now, here the plaintiff was an old man, 72 years of age, about to marry, and he then executed deeds conveying away all his estates. The plaintiff's title depended almost upon a voluntary gift; and his lordship said, he thought the circumstances were sufficient to shew that the conveyances in question might have been improperly obtained. He should, therefore, make the order for production of the deeds executed by the plaintiff, but not the prior title deeds.

Basford v. Blakesly, Jan. 26th, 1842.

Vice Chancellor of England.

PRACTICE.—PRODUCTION OF DOCUMENTS.

Where a bill is filed to redeem a mortgage, the plaintiff is not entitled to the production of

the title deeds, or mortgage: Secus, as to the mortgage, if the object of the bill is to impeach it.

This was a bill filed to redeem a mortgage, and the defendant having by a schedule to his answer, set forth a list of the title deeds relating to the property mortgaged, and also the mortgage deed and certain letters, a motion was now made for the production of all the documents set forth in the schedule.

Richards for the defendant, objected to the production of the title deeds and the mortgage, and also of the letters, on the grounds that the latter related to other matters, and that a mortgagee is not bound to produce his title deeds.

[*V. C.*—It being a bill to redeem, the mortgage is not impeached.]

Teed, in support of the motion, stated that the bill alleged that the mortgagor at the time the mortgage deed was executed, was a lunatic. With regard to the letters, they were sworn by the answer to relate to the matters in difference, otherwise they would not have been scheduled.

The *Vice Chancellor* said, that there being a general admission in the answer of documents which were stated to relate to the matters in difference, unless the defendant could shew some ground of exception, they must be produced. With regard to the title deeds and mortgage, as the bill did not seek to impeach the latter, the defendant was not bound to produce them.

Thunder v. Verrall, Jan. 21st, 1842.

Vice Chancellor Wigram.

PRACTICE.—AMENDMENT OF BILL.—WANT OF DILIGENCE.

Six weeks having elapsed since obtaining an order for the production or inspection of documents, and before amendment of the bill; Held, that the plaintiff had not used reasonable diligence, and was not entitled to indulgence, unless he could by affidavit explain his delay.

Mr. Romilly moved for leave to amend the bill in this case upon payment of costs, the time having run out. The bill had been filed on the 4th of February, 1841. The answer was put in on the 19th of April following. In consequence of the case made by the answer, the plaintiff, on the 6th of May, gave notice of motion for production or inspection of documents in the possession of a banking company. The motion was made on the 12th of July, and there was no material delay in obtaining inspection of the documents. The Courts rose in the middle of August: the time allowed by the orders had expired.

Mr. Tillotson resisted the motion, and contended that there had here been such negligence as disentitled the party from any indulgence.

V. C. Wigram.—I cannot make the order upon this state of facts. There is clearly a fortnight unaccounted for. I would rather, that you account, by affidavit, for that time. You can mention it again the next seal.

Pearse v. Creswick, Nov. 11th, 1841.

Queen's Bench.

[Before the four Judges.]

DISTRESS.—RENT-CHARGE.—PLEADING.

A., the tenant for life of certain premises, granted to B. an annuity for A.'s life, charged on those premises, and empowered him to distrain for arrears of the annuity, "in the same manner as the law directs in cases of rent in arrear." Held, that B. might justify under a right of distress as for rent, and could claim the benefit of the statutes passed for the protection of landlords.

A grantee of a rent-charge is a person having rent due to him on a contract, within the terms 2 W. & M. sess. 1, c. 5.

The grantee may distrain the goods of a person who is in as tenant of the grantor.

If such tenant is in by a title previous or paramount to the grant, he must plead it.

Replevin. The declaration alleged that the plaintiff, in and upon certain messuages, rick-yards, closes, &c. took the hay, straw, and corn, goods and chattels of the plaintiff, to wit, two stacks of hay, part of one other stack, and a certain other large quantity of hay, to wit, 20 tons weight of hay, and 500 trusses of other hay, 20 tons weight of straw, and 500 trusses of other straw, and one stack of oats. Avowry, for that one Thomas Whitfield, on the 22d of July, 1799, was seised in his demesne as of fee of the premises in the declaration mentioned, and in which, &c. devised the same to trustees, till Sarah Whitfield should attain twenty-one, and then to her for life: that T. Whitfield died seised, and then Sarah Whitfield became seised for her life, and married one Francis George Glynn Johnson, and Johnson and his wife granted to Falkner and another, an annuity or rent-charge of 300*l.* for the joint lives of Johnson and his wife, and charged upon the said premises, and if any part should be in arrear, then it should and might be lawful for the grantees, their executors or administrators, into and upon the said several hereditaments and premises out of which the same was made payable as aforesaid, or any of them, or any part thereof, to enter and distrain, and the distress and distresses then and there found to take, seize, lead, drive, carry away, impound, detain and keep, sell, and dispose of the same in the same manner as the law directs in cases of rent in arrear, until the said annuity, &c. The avowry then alleged that one half year's annuity became due, and the defendant entered, &c. Demurrer and joinder. The cause of demurrer assigned in the margin was, that the hay, corn, and straw mentioned in the declaration, were not distrainable for the arrears of the rent-charge mentioned in the avowry, under the power of distress therein set forth.

Mr. Richards for the plaintiff. This avowry cannot be sustained. First, the grantee of a rent-charge cannot distrain under the circumstances mentioned in the declaration. Secondly, if he can so distrain, he can do so only when the land is in possession of the grantor,

which is not, and is not averred to be, the case here. Corn in barns cannot be distrained for rent in arrear. Nor can hay in a stack. The reason for this restriction in the common law is, that the distress cannot be as the law requires, restored in the same state in which it was when it was taken. *Rolls' Abridgment*,^a *Wilson v. Duckett*,^b *Comyn's Digest*,^c *Cooper v. Pollard*.^d Either hay or corn might be distrained, if in a cart at the time of the distress. That was the state of the law to the time of 2 W. & M. c. 5. That statute authorized the sale of personal goods distrained for the payment of rent. The enactment permitting the sale, shews that it could not have been done without the statute. But even that statute does not apply to the case of a rent-charge. The words of the recital of the statute shew that it is confined to cases of rent arrear on demise or contract. [Mr. Justice *Wightman*.—Is not the power of distress given by contract here?] It is not the same power. In like manner the 11 Geo. 2, c. 19, is confined to the case of landlord and tenant. *Miller v. Green*,^e is in point. In that case *A.* had granted to *B.* an annuity, charged on the premises, with power to enter and distrain for the arrears, &c. "the distresses to detain, manage, sell, and dispose of, in the same manner in all respects as distresses for rents reserved on leases for years; and there it was held, that standing crops could not be distrained in like manner as arrears of rent. The words there are much stronger in favour of the power than those in the present deed. If construed strictly, the words here only give power as to the management of the distress, but do not extend the right to take it. There is a great distinction between a distress for a rent-charge and a distress for rent. And here, too, the power, whatever it is, must be very limited in its exercise now, for the present tenant of the lands is a stranger to the deed. An annuitant cannot seize the goods of a stranger as a landlord can.

Martin for the defendant.—This avowry is good. The distress may be maintained at common law; or secondly, it is lawful under the 2 W. & M. c. 5; thirdly, the deed itself confers on the grantee the full power of distress; and fourthly, the demurrer is too large. There is nothing in the argument that the tenant is a stranger. The grantor was "seised in his demesne as of fee;" that describes a seisin of the freehold, and excludes the idea of any other possession than that of the grantor. *Bullard v. Harrison*.^f The tenant holds under the will of the grantor; the person now in possession, must therefore be a person in possession under him who granted the right of distress. [Mr. Justice *Coleridge*.—Could the grantor give to the grantee a greater right than he himself possessed? The grantor could

^a 667.^b 2 Mod. 61.^c Distress.^d Sir W. Jones, 197.^e 2 Crom. & Jerv. 143; 2 Tyrr. 1; 8 Bing. 92; 1 Moore & S. 199.^f 4 Maule & Sel. 392.

not distrain the cattle of a stranger trespassing on the land. Could he by his grant enable the grantee to do so? He could not; but the grantee of this rent-charge has all the same rights as a landlord would have. In Coke upon Littleton, rent and rent-charge are put on the same footing.⁵ The 4 Geo. 2, c. 28, s. 5, gives the owner of a rent seck the same remedy as in the case of a rent reserved on a lease. A rent-charge is a rent seck, with an added power of distress. All the authorities shew that the power of distress for a rent-charge, may be the same as on a demise. In principle, there can be no difference of hardship between the two cases. But here the question of hardship does not arise. Nor on the statement on the face of these pleadings is it to be presumed; but the question really is, whether hay is distrainable. It is so. Hay is a personal chattel. All personal chattels are liable to distress. Formerly, a distress was a pledge, and a man was bound to remove it; but in such a state that it could be restored as it had been removed. As hay and corn on the ground, or in barns, could not be so restored, it came to be laid down that they could not be distrained; but in Coke upon Littleton it is shewn,⁶ that if they could be so restored, they might be removed. The objection to distraining them was not therefore in the things themselves, but in the power to restore them as they had been removed. But where they could be restored in the same state as that in which they were removed—as if the hay or corn was in a cart, the distress was good, even at common law. Blackstone's Commentaries.¹ But now corn and hay are universally distrainable by the stat. 11 Geo. 2, c. 19, s. 10, which gives the party making the distress the right to impound it on the premises, so that there need be no removal. The reason, therefore, which prevented the distress being made on hay and corn, having ceased, the prohibition to distrain them must cease also. Even assuming that it does not appear that the grantor of this rent-charge was owner of the fee, still the grant is good. It might be if he was only tenant for life. *Saffery v. Elgood*.² Again, the distress is made legal by the 3 W. & M. sess. 1, c. 5, s. 3, by which distress may be made by any person to whom rent is due on a contract of sheaves, or cocks of corn, or corn loose, or in the straw, or hay lying or being in any barn or granary, or upon any hovel, stack, or rick, or otherwise, upon any part of the land. This was rent granted by contract within the words of that statute. The terms of this grant are much stronger than those in *Miller v. Green*.³ There too, the distress was of growing crops, and the statute was intended strictly to confine the right of distress upon growing crops to landlords. So that that case rather supports than impeaches the right of distress in the present case. Then this demurrer is too large.

Ferguson v. Mitchell,⁴ and *Spyer v. Thelwall*.⁵ The declaration alleged the distraint upon two stacks of hay, part of another stack, and 20 tons of hay, and then again 500 other trusses, *non constat* but that these tons and trusses of hay were in carts. If so, they were distrainable at common law, and the avowry is sufficient to cover them. An avowry must be treated as a declaration, because in replevin both parties are actors, and if so treated here, it sets up a sufficient title to make the distress.

Mr. Richards in reply.—Assuming that under certain circumstances, the grantee of an annuity may have the right of distress, that right is not shewn to exist here. The hay and corn mentioned here are not distrainable. Even supposing the statutes to include in "rent by contract," the contract of a grant of annuity, the power must be confined to the contracting parties, and cannot be extended to third persons. There is nothing here to shew that the plaintiff was in possession under the grantor, and the phrase "seisin in fee," will not raise that fact by implication.

Cur. adv. vult.

Lord Denman, C. J.—This was an action of replevin. The defendant deduced his title to the premises on which the distress was taken in the following manner. He shewed that Francis Johnson and Sarah his wife, were seised of the premises in question for the life of the said Sarah, and being so seised, Johnson granted to one Heptinstall, a certain annuity of 300*l.* secured on these premises, and the indenture of annuity contained the grant of a power to distrain "in the same manner as the law directs in cases of rent in arrear." The avowry then stated the death of Heptinstall, and the transfer of his right to the defendant, and his entry on the premises for the purpose of making the distress. To this avowry there was a general demurrer. On this demurrer, there was an argument that hay, corn, and straw in a rick could not be distrained for the arrears of an annuity at common law, and that the defendant could not claim the benefit of the statutes passed for the assistance of landlords. But we are of a different opinion, and think that the grantee of a rent-charge may justify under a right of distress as for rent. A distress could not always be taken at common law, because in a distress, the party taking it was bound to re-deliver it in the state in which it was taken, and where it could not be so returned, it could not lawfully be taken, and therefore hay, corn, and straw, under circumstances like these, were not distrainable, though hay in a cart might always be distrained, because it could be returned in the state in which it had been taken. But this strictness of the common law has been remedied by the provisions of the statute of 2 W. & M., by which the landlord, or person having rent due to him on a contract, was enabled to distrain corn in any part of the ground. If this was a case between landlord and tenant, there can be no

⁵ Co. Litt. 144 a.

⁶ 47 a.

¹ 3 Bla. Com. 9.

² 1 Adol. & Ell. 191; 3 Nev. & Man. 346.

³ 2 Tyrr. 1; 2 Crom. & Jerv. 143.

⁴ 2 Crom. Mee. & Ros. 687.

⁵ *Ibid.* 692.

doubt that the distress would be good; but it was contended for the plaintiff that this statute did not apply to such rent as this, but only to rent under a demise, properly so called, and *Miller v. Green*,^a was cited in favour of the plaintiff upon this proposition. Without impugning the authority of that case, we get rid of its effects by saying that we think it does not apply to the present. Then the party relied on the provisions of the 11 Geo. 2, but that is in terms limited to landlords. Here the defendant claims the benefit of 2 W. 3, and if there was any doubt as to his being entitled to the benefit of that statute, it would be removed by the 4 Geo. 2, c. 28, s. 5, which puts on the same footing rent-seck and rent reserved on a lease. But it was said that, however that might be, the distrainer had no power of distress for such rent upon the goods of a stranger, or of one who was in possession under a substantive demise. The case of *Saffery v. Elgood*^o is decisive as to the right of distress under such circumstances. The avowry was inconsistent with the grant of a lease for years, and therefore it might be taken to have been pleaded that this was no substantive demise at all. It was said, however, to be clear that the allegation of seisin, so far from being inconsistent with a demise for years, is a proof of it, and therefore, that the plaintiff might claim by a demise previous to the grant of the rent-charge. But if the plaintiff really did hold in that way before the grant of the rent-charge, he might have replied that fact. *Howell v. Bell*,^p is an authority on this point, and as the plaintiff has not put such a replication on the record, the judgment of the Court must, on that as well as the other points, be for the defendant.

Johnson v. Faulkner, H. T. 1842. Q. B. P. C.

Queen's Bench Practice Court.

WRIT OF TRIAL.—SHERIFF'S JURISDICTION.—UNLIQUIDATED DAMAGES.

If a claim made by a plaintiff is for unliquidated damages, the under-sheriff has no jurisdiction to try it, although the amount of it is less than 20l., and the particulars stated to be for 7l. 10s., and the Court set aside the writ, and all subsequent proceedings at the instance of the plaintiff, who had been unsuccessful on the trial, although he had procured the judge's order for the writ of trial.

This was an action for damages consequent on the improper dismissal of the plaintiff by the defendant, three months sooner than by the agreement between the parties he was entitled. The particulars only claimed a sum of 7l. 10s. The plaintiff, with consent of the defendant, procured an order for a writ of trial, the case was accordingly tried before the undersheriff. A verdict was found for the defendant. An application was afterwards made

to set aside these proceedings, on the ground of the undersheriff having no jurisdiction to try a claim for unliquidated damages.

W. Cooke shewed cause against this rule, and contended that the plaintiff could not object to the want of jurisdiction on the part of the undersheriff, as he had himself procured the order for the writ of trial.

Pe arson supported the rule, and submitted that the contract of the parties could not give jurisdiction.

Wightman, J., thought, that as by the notice of the action it was for unliquidated damages, and therefore, out of the jurisdiction of the undersheriff, the consent of the parties did not supply the defect of jurisdiction. The proceedings must, therefore, all be set aside.

Rule absolute for setting aside the proceedings.—*Lismore v. Beadle*, H. T. 1842. Q. B. P. C.

SERVICE OF NOTICE OF DECLARATION.—LACHES.

Notice of declaration was served on the 30th October, the 31st was a Sunday. It was held to be too late to move to set the notice aside on the 4th November.

In this case, the declaration was filed and the notice of that proceeding was served on the 30th October. The 31st of that month was a Sunday, and on the 4th November application was made to set aside the notice and all subsequent proceedings for irregularity. A rule to that effect having been obtained,

Martin shewed cause against it, and contended as a preliminary objection, that the application was too late. More than four days had elapsed between the service of the notice of declaration and the application. At latest, the application should have been made on the 3d November. The fact of the 31st October being a Sunday, did not prevent it being counted, as was decided in *Hinton v. Stevens*.^a

Jervis supported the rule, and contended that the application was in full time. The defendant was not bound to come to the Court before the 4th November under the circumstances of the case. The decision in *Hinton v. Stevens* was distinguishable from the present. There, the Sunday was an intermediate day, but here, it was the first of the four days. The time did not begin to count until the 1st November, and, therefore, according to the rule laid down in that case, the application being made on the 4th November, was in due time, as the result as that case was that the application must be made in four days from the occurrence of the irregularity. Besides, the affidavit supporting the application, was served on the 3d November.

Patteson, J., thought the case of *Hinton v. Stevens* clearly analogous to the present, and therefore, that the Sunday must count in the four days, although it was the first of them. The rule must consequently be discharged, and with costs.

Rule discharged, with costs.—*Willis v. Bell*, M. T. 1841. Q. B. P. C.

^a 2 Cr. & J. 143; 2 Tyr. 1: 8 Bing. 92; 1 Moo. & S. 199.

^o 1 Adol. & Ell. 191; 3 Nev. & Man. 346.

^p 3 Salk. 136.

^a 4 Dowl. 423, O. S.

Common Pleas.

INFANT:—PROCHEIN AMY.—SECURITY FOR COSTS.—COSTS OF RULE.

Where it is sought to obtain security for costs from the next friend, in whose name an infant sues, upon the ground that he cannot be found at the address of which he is described, the proper course of proceeding is to take out a summons before the judge at chambers, for a stay of proceedings until his residence is properly pointed out.

Mr. Serjt. *Stephen* had obtained a rule calling upon the infant plaintiff in this suit to shew cause why the proceedings should not be stayed unless security for costs was given by William Thompson, his next friend, by whom he sued, the ground of the application being, that no such person as William Thompson could be found at the residence of which he was described, and that the plaintiff's attorney had refused to give the defendant any further information by which Thompson might be found, saying that he was unable to do so.

Mr. Serjt. *Bompas* now shewed cause, and contended, first, that the present rule was improperly drawn up, for that it should have called upon the infant to show cause why the appointment of his next friend should not be revoked; secondly, that the materials upon which the application was made were insufficient, for that it was not sworn that Thompson was in insolvent circumstances; and thirdly, that the defendant had improperly come to the court, for that the usual course which was taken, and which was the proper course, was to obtain a summons at chambers calling upon the attorney of the plaintiff to shew cause why proceedings should not be stayed, until he had given to the defendant such information as would enable him to discover the residence of the party in whose name the suit was conducted. *Yurworth v. Mitchell*, 2 Dow. & Ry. 423; and *Watson v. Fraser*, 9 Dowl. P. C. 711, were referred to.

Mr. Serjt. *Stephen*, in support of the rule, relied upon *Munn v. Burthen*, 4 Mo. & P 215, and urged, that it would have been absurd to take out a summons, calling upon the plaintiff's attorney to give that information which he had already declared his inability to afford.

Per Curiam.—The mere verbal application to the attorney was not sufficient; the Court will not dispense with the summons. The rule must be discharged.

Bompas then applied for the costs of the rule, upon affidavits contradicting those upon which the rule had been moved, and stating that the application had not been made to the attorney of the plaintiff personally, but to an individual accidentally in his office, who requested the applicant to wait to see the attorney, but who also expressed his belief that Thompson was resident at a particular house, which he described, and which had since proved to be the fact.

Stephen, contra.

Rule discharged with costs.—*Hayes, an infant &c. v. Carr*, H. T. 1842. C. P.

CAUSES FROM THE MASTER OF THE ROLLS' COURT,

APPOINTED TO BE HEARD

Before Vice Chancellor Knight Bruce.

Johnson v. Hardy
Hales v. Darell, *exons.*, *fur. dirs.*
Colman v. Jessop, *fur. dirs. and costs*
Ball v. Wivell, *ditto*
Attorney General v. Newbury—*Ditto v. Burchall, ditto*
Davies v. Peers, *ditto*
Chadwick v. Broadwood, *exons.*
Fyler v. Fyler, *ditto*, 2 causes
Wilkins v. Stevens, *ditto, and fur. dirs.*
Bridge v. Brown, *exons. and ditto*
Nicholson v. Wathen, *fur. dirs.*
Wakeman v. Wakeman, *at request of defendant*
Wilding v. Richards—*Ditto v. Eyton*
Attorney General v. Compton
Benson v. Heathorne
Dowell v. Dew
Mann v. Mills
Rodes v. Prosser
Clark v. Wormald
Mynn v. Hart
Pittom v. Howard
Huddlesley v. Nevill
Sheddon v. Idle
Sicklemore v. Kingsford, *at request of defendant*
Padley v. Kidney
West v. Price
Leman v. Oxenham
James v. Frearson
Rutherford v. McCullum
Stubbs v. Iveson
Upjohn v. Penruddock
Daniel v. Harding, *at request of defendant*
Marquis of Westminster v. Morrison
Wood v. Ordish
Viollet v. Searle
Drant v. Vause
Judson v. Elkins
Prosser v. Seaborne
Attorney General v. Webb—*Ditto v. Godson*
Rutherford v. McCollum
Att. Gen. v. Lord Carrington, *exons. & fur. dirs.*
Iles v. Dixon, *fur. dirs. & costs*
Morris v. Levie—*Ditto v. Lloyd, fur. dirs. & petition*
Attorney General v. Sherman, *fur. dirs. and costs*
Fielder v. Bellingham, *ditto*
Hawkins v. Hawkins, *ditto*
Collins v. Johnson, *fur. dirs. and costs*
Reid v. Smith, *ditto*
Westwood v. Slater
Gardner v. Gardner, *fur. dirs. and costs*
Attorney General v. Callum—*Ditto v. Le Grice, ditto*
Pettingal v. Pettingal, *ditto*
Wilcocks v. Shelly, *exons.*

CAUSES FROM THE MASTER OF THE ROLLS' COURT,

APPOINTED TO BE HEARD

Before Vice Chancellor Stigram.

Perry (panper) v. Walker
Page v. Way
E. T. Hardcastle v. Cooper
Crockett v. Crockett, *fur. dirs. & costs*
Drake v. Drake, *ditto*
Liddle v. Carden—*Ditto v. Simpson, fur. dirs.*
Attorney General v. Brown, *fur. dirs.*

Courtney v. Courtney—Sampson v. Ditto, *exons.*
and ditto

Leeming v. Sherratt, *fur. dirs. and costs*
Dover v. Alexander
Fowler v. Wood
Edwards v. Meyrick
Bower v. Cooper
Harvey v. Bousfield
Beasley v. Kenyon
Griffin v. Wood
Cooke v. Fryer
Attorney General v. Millard
Meek v. Kettlewell
Villebois v. Ward
Williams v. Wood
Smith v. Palmer
Havard v. Price
Weymouth v. Lambert
Morgan v. Davies
Hughes v. Eades
Waddilore v. Taylor
Webb v. Bruce

BILLS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

NOTICES OF BILLS.

For enabling Ecclesiastical Corporations to grant Leases. The Bishop of London.
For enabling Incumbents of Benefices to grant Leases. The Bishop of London.
To amend the laws relating to Loan Societies.
For transferring the hearing and determining of certain Appeals from her Majesty in Council to the House of Lords.

Lord Campbell.

For making better provision for hearing Appeals and Writs of Error in the House of Lords. Lord Campbell.

For the better Administration of Justice in the High Court of Chancery.

Lord Campbell

BILLS IN PROGRESS.

For establishing Local Courts. Lord Brougham.
[For 2d reading.]
For improving the Law of Evidence. Lord Denman.
[For 2d reading.]
For the Amendment of the Law relating to Bankrupts, and the better Advancement of Justice in certain Matters relating to Creditors and Debtors. Lord Cottenham.
[For 2d reading.]
To improve the Practice and extend the Jurisdiction of County Courts. Lord Cottenham.
[For 2d reading.]
To enable the Lord Chancellor to direct certain Proceedings in Bankruptcy, Insolvency, and Lunacy to be carried to the County Courts. Lord Cottenham.
[For 2d reading.]

House of Commons.

NOTICES OF BILLS.

To allow Writs of Error on Mandamus. The Attorney General.
To alter the Law as to Double Costs, and other matters. The Attorney General.

To amend the Law of Copyright.

Lord Mahon.

[This, we presume, is the renewal of Mr. Serjt. Talfourd's excellent bill,—a very different affair from Mr. Godson's.]

To amend the Law of Marriage.

Lord F. Egerton.

For the more effectual inspection of Houses, licensed at Quarter Sessions for the Insane.

Lord G. Somerset.

BILLS IN PROGRESS.

To regulate the Sale of Parish Property.

[For 2d reading.] Sir E. Knatchbull.

For Registering Copyrights and Assignments, and better securing the property therein.

[In Committee.] Mr. Godson.

For the Regulation of Buildings.

[In Committee.] Mr. F. Maule.

For the Improvement of certain Boroughs.

[In Committee.] Mr. F. Maule.

Municipal Corporations. [In Committee.]

To consolidate the Queen's Bench, Fleet, and Marshalsea Prisons. Sir J. Graham.

[In Committee.]

Regulation of certain Apprentices.

[Passed.] Sir J. Graham.

Small Debt Courts Bills for

Barnsley,
Leicester, (jurisdiction 15*l.*)
Honiton.
Kingswinford,
Liverpool.

ATTORNEYS' ANNUAL CERTIFICATE DUTY.

We observe that two petitions have been presented for the repeal of this obnoxious tax. We have not yet heard whether any general movement is intended on this subject.

THE EDITOR'S LETTER BOX.

The letters of "Inexperiens;" "A Subscriber;" and "Lector," shall be attended to.

The conduct of the post receiving house, kept by a baker, should be represented to the secretary at the General Post Office. Book-sellers or stationers should be appointed to receive letters.

L., whose articles are dated 9th June, 1837, and were enrolled the following day, may of course be examined in Trinity Term, 1842, without any special application.

We are obliged to defer several communications, and trust that during the Session of Parliament our correspondents will be as concise as possible. The Law Bills are increasing and multiplying.

Cheshire.—Undersheriff, Chas. A. Holland, Northwiche, Esq.; Acting Undersheriff, John Hostage Chester, Esq.; Town Deputy, Sharpe, Field, and Jackson, 41, Bedford Row. See List, p. 345, *ante*.

The Legal Observer.

SATURDAY, MARCH 12, 1842.

— “*Quod magis ad nos
Pertinet, et deacire malum est, agitamus.*”

HORAT.

APPELLATE JURISDICTION OF PRIVY COUNCIL AND HOUSE OF LORDS.

We are now in possession of Lord Campbell's three bills for the reform of the judicial establishment in the House of Lords, in the Privy Council, and in the Court of Chancery, and we shall proceed to lay them fully before our readers. We believe that the scheme which is developed by them, although certainly not entitled to the merit of novelty—for it has been recommended both by Mr. Burge and Mr. Miller—has not before assumed the shape of bills; and we are glad to have it in this shape, as the real difficulties of the subject will more easily be discovered, and the merits of the question can much more readily be discussed.

We consider that it is not disputed that the appellate jurisdiction both in the Privy Council and in the House of Lords is in an unsettled and unsatisfactory state. Year after year, session after session, bills have been brought in, so that it will hardly be denied that some legislation on the subject was called for. It is curious that almost every law lord now in the Upper House has his own remedy for the evils.

In 1834 Lord Brougham brought in a bill for transferring the House of Lords appeals to the Privy Council. The present Lord Chancellor proposed, in 1836, to appoint a second Vice Chancellor, and to let him preside in the Privy Council. Lord Cottenham, in 1840, proposed that the Master of the Rolls should preside, as of old, in the Privy Council; and, in 1836, that a Chief Judge in Equity should be appointed to be the permanent judge of the Court of Chancery, and that the Lord Chancellor should preside alternately in the House of Lords and in the Privy Council. Lord Langdale at the same time proposed that the appeal business of the Privy Council

should be transferred to the House of Lords, but he would have left the Lord Chancellor in the Court of Chancery as a permanent judge; he would have appointed a Lord President of appeals to preside in the House of Lords, with two Lords Assistant, and besides these a Lord Keeper, who was to be Minister of Justice, and a member of the Cabinet. The last bill on the subject was brought in in 1841 by Sir E. Sugden, who bitterly complained both of the House of Lords and the Privy Council, and wished to remodel them by appointing Lords Assistant, who might “assist” either in one or the other as necessity required.

We have now the present three bills, by which it is proposed to transfer the business of the Privy Council to the House of Lords; to extend the sittings of the House of Lords during the prorogation of Parliament; and to appoint a Chief Judge in Equity who should be a permanent Judge of that Court.

BILL No. 1.—TRANSFER OF JURISDICTION.

By stat. 2 & 3 W. 4, c. 92, the Court of Delegates was abolished, and the ecclesiastical and admiralty appeals were transferred to the Privy Council. It is proposed by this bill (s. 1) that all appeals heretofore made under 2 & 3 W. 4, c. 92, to the Privy Council, shall be made to the House of Lords. By s. 2, that all appeals in prize suits in the Courts of Admiralty or Vice Admiralty, or any other colonial Courts, which may be made by virtue of the Judicial Committee Act (3 & 4 W. 4, c. 41), and all appeals in matters of lunacy which may be made from the Court of Chancery to the Privy Council, shall be made to the House of Lords.

The bill is as follows:

1. Whereas by virtue of an act passed in a session of parliament of the second and third years of the reign of his late Majesty William the Fourth, intitled an Act for transferring the Powers of the High Court of Delegates,

both in ecclesiastical and maritime causes, to his Majesty in council, it was enacted, that from and after the first day of February one thousand eight hundred and thirty-three, it should be lawful for every person who might theretofore, by virtue either of an act passed in the twenty-fifth year of the reign of king Henry the Eighth, intituled, the Submission of the Clergy and Restraint of Appeals, or of an act passed in the eighth year of the reign of Queen Elizabeth, intituled, for the avoiding of tedious Suits in Civil and Marine Causes, have appealed or made suit to his Majesty in his High Court of Chancery, to appeal or make suit to the King's Majesty, his heirs or successors, in council, within such time, in such manner, and subject to such rules, orders, and regulations for the due and more convenient proceeding, as should seem meet and necessary, and upon such security, if any, as his Majesty, his heirs and successors, should from time to time by order in council direct: and whereas by virtue of an act passed in a session of parliament of the third and fourth years of the reign of his late Majesty William the Fourth, intituled, An Act for the better Administration of Justice in his Majesty's Privy Council, it was enacted, that from and after the first day of June one thousand eight hundred and thirty three all appeals or applications in prize suits, and in all other suits or proceedings in the Courts of Admiralty, or Vice Admiralty Courts, or any other court, in the plantations in America and other his Majesty's dominions, or elsewhere abroad, which might then, by virtue of any law, statute, commission, or usage, be made to the High Court of Admiralty in England, or to the Lords Commissioners in prize cases, should be made to his Majesty in council, and not to the said High Court of Admiralty in England, or to such commissioners as aforesaid, and such appeals should be made in the same manner and form, and within such time, wherein such appeals might, if this act had not been passed, have been made to the said High Court of Admiralty or to the Lords Commissioners in prize cases respectively; and that all laws or statutes then in force with respect to any such appeals or applications should apply to any appeals to be made in pursuance of that act to his Majesty in council: and whereas, from the decisions of various courts of judicature in the East Indies, and in the plantations, colonies, and other dominions of her Majesty abroad, an appeal lies to her Majesty in council: And whereas from the decisions of the High Court of Chancery in matters of lunacy, an appeal lies to her Majesty in council: Be it therefore enacted, that from and after the day of all appeals or suits which may now be made by virtue of the said recited act of the second and third years of the reign of King William the Fourth to her Majesty in council shall be made to the House of Lords; and that the said house shall thenceforth have power to proceed to hear and determine any appeal or suit so to be made by virtue of this act, and to make all such judgments, orders, and decrees in the

matter of such appeal or suit, as might heretofore have been made by her Majesty in council by virtue of the said recited act of the second and third years of the reign of King William the Fourth, if this act had not been passed.

2. That from and after the day of all appeals or applications in prize suits, and in all other suits or proceedings, in the Courts of Admiralty, or Vice Admiralty Courts, or any other court, in the plantations of America and other her Majesty's dominions, or elsewhere abroad, which may now by virtue of the said herein-before mentioned act of the third and fourth years of the reign of King William the Fourth, or by virtue of any law, statute, commission, or usage, be made to her Majesty in council, and also all appeals in matters of lunacy which may now be made from the High Court of Chancery to her Majesty in council, shall be respectively made to the House of Lords, and not to her Majesty in council, and that the said house shall thenceforth have power to proceed to hear and determine any appeal or suit so to be made by virtue of this act, and to make all such judgments, orders and decrees, in the matter of such appeal or suit, as might heretofore have been made by her Majesty in council, by virtue of the said recited act of the third and fourth years of the reign of King William the Fourth, if this act had not been passed; and that all laws or statutes now in force with respect to any such appeals or applications shall apply to any appeals to be made in pursuance of this act to the said house.

3. Provided always, that nothing herein shall prevent the Queen's acceding to treaties appointing certain persons to hear prize appeals.

BILL No. 2.—HOUSE OF LORDS.

The second bill is somewhat similar to one introduced by Lord Cottenham in 1836. It authorises the sittings of the House of Lords to sit and hear appeals and writs of error during the prorogation of parliament, but not during the dissolution of parliament, as Lord Cottenham's did: and it gives a power to the Queen to summon the House of Lords by proclamation, and to discontinue such sittings, which clause was not contained in Lord Cottenham's bill; and besides summoning the Equity judges to the House of Lords, as well as the Common Law Judges, the Judge of the Prerogative Court and the Judge of the High Court of Admiralty, are also to be summoned, so that the House of Lords would be fully as efficient in numbers as the Judicial Committee. But the great advantages of this Court would be that the Lord Chancellor would here always preside assisted by the other law Lords, and such of the Judges of the land as it was thought necessary to summon. This would be the great appellate Court, not only for England, but for all her dominions; and we conceive

that this great professional advantage would attend its establishment:—Hitherto the practice in the House of Lords and Privy Council, but more especially in the latter Court, has been confined to a few members of the bar, and to a few proctors.* We would have the whole thrown open to every member of the profession, and this, as we conceive, is a part of the plan. "When an important case," said Lord Campbell in his speech, "comes before the Court of Privy Council, it was necessary to take some of the leading barristers from the other Courts; and as the *quiddam honorarium* in such cases would be greater than that barrister would have got in the Court in which he generally practised, the expense would of course be increased to the suitor. If there were only one Court of appeal in the last resort, and that Court permanently sitting, it would have such a bar as would give that satisfaction to the public which it had a right to expect." Indeed, we understand from the whole tenor of the speech, that the whole expenses of the Court—those of the *officers of the House of Lords included*—are to be considerably reduced, which will not only be a boon to the suitor, but, as we conceive, to the great bulk of the profession, who are practically excluded at present from the Privy Council. There seems no reason why an appeal to the House of Lords, either in fees to counsel or otherwise, should be more expensive than an appeal to the Court of Chancery; and that it is so is a blot on the present administration of justice. Here we give the second bill.

1. Whereas it is expedient to make better provision for the hearing of appeals and writs of error in the House of Lords: now therefore be it enacted, that from and after the passing of this act it shall be lawful for the House of Lords to sit for the purpose only of hearing and adjudicating on, and to hear and adjudicate on, all appeals and writs of error already made or brought, or hereafter to be made or brought, to the House of Lords, notwithstanding the prorogation of parliament; and that all decisions or orders of the House of Lords regarding any such appeals or writs of error as aforesaid, during any prorogation of parliament, shall be valid and effectual to all intents and purposes.

2. That it shall be lawful for her Majesty, her heirs and successors, if she and they shall see fit, at any time or times during the prorogation of parliament, by royal proclamation, to summon the House of Lords for the purpose only of hearing and adjudicating on, and to hear and adjudicate on, all appeals and writs

of error already made or brought, or hereafter to be made or brought, to the House of Lords; and that it shall also be lawful for her Majesty, her heirs and successors, if she and they shall see fit, at any time or times, by a like proclamation, to discontinue such sittings of the said House of Lords.

3. That it shall not be lawful for the lords of parliament assembled in pursuance of this act for the purpose of hearing and adjudicating on any appeals or writs of error, during any prorogation of parliament, to act, propose, debate, or treat of any other matter or thing whatsoever.

4. That at the meeting of every parliament the Chief Justice of the High Court of Chancery, the Vice Chancellors, the Judge of the Prerogative Court of the Lord Archbishop of Canterbury, and the Judge of the High Court of Admiralty (not being peers of parliament) shall be summoned to give their attendance and assistance in the upper house of parliament in such manner as the judges of her Majesty's courts of law at Westminster are now summoned; and that from and immediately after the passing of this act writs shall issue to the said Chief Justice of the Court of Chancery, the Vice Chancellors, the Judge of the Prerogative Court of the Lord Archbishop of Canterbury, and the Judge of the High Court of Admiralty, requiring them to attend in the upper house of parliament, during this present parliament, for the purposes aforesaid.

5. That it shall and may be lawful for the House of Lords, as well during the sitting of parliament as during the prorogation thereof, to make all necessary orders for the attendance in the House of Lords of the judges and others summoned or to be summoned in pursuance of this act, or any of them, for the purpose of assisting at the hearing of any appeals or writs of error.

BILL NO. 3.—COURT OF CHANCERY.

We now come to the bill for appointing a permanent judge in the Court of Chancery; and this bill is very nearly the same as that introduced by Lord Cottenham in 1836. Indeed, the only alteration, (except that part which related to the Privy Council, which is omitted,) that we see, is in the second section, which authorizes the appointment of a Chief Judge in Equity, but provides that the selection in the first instance must be made from the Master of the Rolls and the Vice Chancellors. This is, we presume, to avoid the necessity of appointing any new judge in the present state of the business of the Court. This may be right, but we are averse to thus fettering the power of the Crown in this respect. We believe that few persons can doubt that if Lord Cottenham could be persuaded to take this office, it would be of great advantage to the suitor and the public. Besides, it is surely early days to form an

* In all the Admiralty and Ecclesiastical cases, the proceedings must be taken by proctors.

opinion as to what will in future be the business of the Court of Chancery.

After appointment of Chief Justice of Court of Chancery, Chancellor to cease to preside in the Court of Chancery, but to retain all powers, &c., not being transferred.—Whereas it is expedient that the Chief Judge of the High Court of Chancery should attend exclusively to the business thereof, and that such Chief Judge should hold his office during good behaviour: be it therefore enacted, that from and after the appointment of any person to be Lord Chief Justice of the Court of Chancery as herein-after provided, the person or persons holding the Great Seal of Great Britain, either as Lord Chancellor, Lord Keeper, or Lords Commissioners, shall cease to have any judicial power or authority in the High Court of Chancery, or to exercise or perform any of the powers, duties, or authorities hereby vested in or directed to be exercised by such Lord Chief Justice, but shall have all and every the jurisdiction, power, and authorities heretofore vested in or lawfully exercised by the Lord High Chancellor of Great Britain, not hereby transferred to or vested in the said Lord Chief Justice, in all respects as if this act had not been made.

2. That it shall be lawful for her Majesty, her heirs and successors, to nominate and appoint from time to time, by letters patent under the Great Seal of the United Kingdom, a fit person (being a barrister at law of fifteen years standing at the least) to be Chief Judge of the High Court of Chancery, by the style of "the Lord Chief Justice of her Majesty's High Court of Chancery," to hold such office during good behaviour: Provided always, that if at the time of the passing of this act no vacancy shall exist in the offices of Master of the Rolls, Vice Chancellor of England, first Vice Chancellor, and second Vice Chancellor, then and in such case the said Lord Chief Justice to be first appointed under the authority of this act shall be selected from the persons respectively holding such offices.

3. That nothing herein contained shall authorize the appointment of any other Judges of the High Court of Chancery than the said Lord Chief Justice, the Master of the Rolls, and two Vice Chancellors.

4. The Lord Chief Justice to preside in the Court of Chancery, and do all acts heretofore done by the Lord High Chancellor in the Court of Chancery, &c.

5. All matters heretofore done before Lord Chancellor in Chancery to be done before the Lord Chief Justice in Chancery.

6. Lord Chief Justice may hear all matters pending.

7. Bills, &c. to be addressed to Lord Chief Justice.

8. Lord Chief Justice shall be visitor of charities.

9. This act not to alter jurisdiction of Court of Chancery.

10. *Precedence settled.*—That the said Lord Chief Justice shall have rank and precedence

next the Lord Chief Justice of the Court of Queen's Bench.

11. The Queen may approve of a seal for the Court of Chancery.

12. All writs and schedules to pass the seal of the Court of Chancery.

13. Registrars, &c. to attend Chief Justice in Equity, and to be appointed by him.

14. Queen may direct what officers shall attend Chief Justice in Equity, and how fees shall be apportioned.

15. The salary of Lord Chief Justice shall be £.

16. Retiring pension.

18. Not to alter act securing the retiring pension of Chancellor. 2 & 3 W. 4, c. 111.

18. Forging the seal of the Court of Chancery.

20. Lord Chief Justice in Equity may be removed upon an address of both houses of parliament.

We have now laid the whole scheme before our readers, which we cannot but think generally interesting.

THE PROPERTY LAWYER.

YEARLY TENANT.

WHERE a yearly tenancy has continued a number of years, the lessor and the lessee being the same, it may be treated after the expiration of the tenancy as an original demise for the whole period occupied; and a liability existing during the time to determine the tenancy by a fixed notice, or at a certain period, makes no difference in the legal effect of the occupation. *Sutherland v. Herstmonceux*, 1 Man. & Ry. 426; and the authorities cited. And where a house and appurtenants by a written demise were demised "for one year and six months certain from the date," at a yearly rent "payable at the usual periods," with a proviso that three calendar months notice should be given on either side previous to the determination of the said tenancy," the holding having continued beyond the term of the year and six months, it was held that such holding was not a new tenancy commencing at that period, but a yearly tenancy commencing from the original entry of the tenant; and that therefore a notice to quit at the expiration of the second year of the holding was good. "It appears to me," said Lord Denman, C. J., as it did to my brother Coleridge, that the yearly tenancy must be referred to the time of entry." *Mr. J. Patteson*.—"The term 'current year' must always be referred to the time of entry, if that appears. It is true that according to this construction the ex-

pression 'six months certain' has no meaning, the tenancy having continued beyond it; but that is the fault of the parties." *Doe d. Robinson v. Dobell*, 1 Gale & Dav. 218.

DEED VOID AGAINST CREDITORS.

It is a mistake to suppose that the stat. 13 Eliz. c. 5, makes void as against creditors all voluntary deeds. All that it says is, that a practice of making covinous and fraudulent deeds had prevailed, and therefore that all feoffments, gifts, &c. of any lands or goods and chattels as against the persons whose actions, debts, &c. by such covinous and fraudulent devices and practices shall be disturbed, hindered, delayed or defrauded, shall be void. The Courts, in construing the statute, have held it to include deeds made without consideration, as being *prima facie* fraudulent, because necessarily tending to delay creditors. But the question in each case is, whether the deed is fraudulent or not; and to rebut the presumption of fraud the party may give in evidence all the circumstances of the transaction, not to contradict the consideration stated in the deed, but to take it out of the operation of the statute. The law on this subject is thus clearly stated by Mr. Baron Rolfe in *Gale v. Williamson*, 8 Mee. & Wels. 406, where a father by deed assigned to his son, "in consideration of natural love and affection," his dwelling-house, and all his personal estate; and it was held in an action by the son against the sheriff for levying on goods part of such estate, under a *fi. fa.* against the father, that it was competent to the plaintiff to prove that by a bond bearing even date with the deed of assignment, he bound himself to maintain his father's wife and children; and that the jury having found that it was a part of the same transaction, and that the assignment was *bond fide*, it was not void against creditors under the stat. 13 Eliz. c. 5.

LORD BROUGHAM'S LOCAL COURTS BILL.

THE various projects of law reform thicken upon us, and every learned member of the House of Lords has now entered into the field with one or more bills of his own. From indications from various quarters, it appears to us tolerably certain that a Local Court Bill of some kind or other will pass, and we have therefore thought it right to bring before our

readers the fullest information on the subject in our power, as we cannot but consider it is all important in the profession.

We gave last week an abstract of Lord Brougham's Bill, and in consequence of several inquiries regarding the principal provisions it contains, we proceed to state fully all the important clauses.

The *preamble* is worth extracting: it states That it is expedient that the means should be afforded to the people of this realm, of having their suits tried as speedily and as near to their own homes as may be, whereby expence, vexation, and delay may be avoided: and that it is fitting that at the first the provisions for this purpose should be *confined to certain parts of the country*, to the end that the rest thereof may profit of the improvements *suggested by experience* when the same shall be extended over the whole of the kingdom, and that the due administration of justice may be placed upon a sure foundation.

The bill then proceeds to enact that it shall be lawful for her majesty, in such cases as she shall deem it expedient so to do, not exceeding twenty-five in the whole, to nominate and appoint, by commission under the Great Seal, one *Serjeant at Law*, or one *barrister*, of ten years standing, or of five years standing at the bar, having previously practised as a *special pleader* for five years,^a for any one or more county or counties, riding or ridings, or any parts thereof respectively, who shall be called the judge in ordinary of the same, and shall preside in a court to be called the Court of the Judge in Ordinary, which court shall be a court of record; and every such judge shall, within the limits of his jurisdiction, have, exercise, and enjoy all the rights, powers, and privileges of a judge of a court of record.

2. That every such judge shall divide his jurisdiction into districts, specifying the parishes and townships contained in each district, and the place of trial for each district, and shall hold courts for the trial of causes at each of such places as many times in the year as her majesty shall, by and with the advice of her most honourable Privy Council, think fit to order; and that every such judge shall appoint the particular times for holding his courts at each of the said places during the year, such times not being within the month of August, nor being the times for holding the assizes or the quarter sessions of the peace at the said places, and shall cause notice to be given in the London Gazette of the several districts within his jurisdiction, and of the parishes and townships contained in each district, and of the times and places so appointed for trial.

3. Such judges to be justices of the peace.

4. Registrars of the court and their clerks.

5. Criers, ushers, and messengers to be appointed.

^a Why not also an attorney of fifteen or twenty years *actual* practice? ED.

6. Judges not removable, except by address of the two houses of Parliament.
7. Clerks, &c., to be removable.
8. Judges to take oaths.
9. Registrars and clerks to take oaths.
10. No fees to be taken by officers but those allowed by the act.
11. Fees to be paid into consolidated fund after deducting salaries.

Regarding the *practitioners* of these courts, the following provisions are proposed :

12. That any persons admitted barristers at law, may practise as advocates before the said judges in ordinary, and any persons admitted attorneys of any of the superior courts at Westminster may practise as advocates, attorneys, or agents before the said judges; but no attorney or agent so practising shall, on any pretence whatever, demand or take more by way of fees for work by him done than according to a table of fees from time to time to be settled by the judges of the superior courts at Westminster as herein-after mentioned; and if any attorney or agent so practising shall offend in that behalf, it shall be lawful for any of the superior courts at Westminster whereof he is an attorney to examine the charge against him made by any person of whom he may have demanded or received such fees, which court shall inquire into the same in the same manner as such court is now by law authorized to do in the case of other offences committed by attorneys, and may, on satisfactory proof of such charge, strike him off the roll of attorneys of such court.

13. Table of fees to be hung up in court.

14. *Actions by Attorneys.*—That no attorney shall bring any action in any court of any judge in ordinary for any business done by him in or about any cause in any court of any judge in ordinary, until a copy of the bill, signed with the attorney's name and place of business, shall have been delivered personally, or at the dwelling place of the party charged therein, at least one calendar month before the commencement of the action; which bill may be referred by the party charged therein to the registrar of the court to be taxed; and if the attorney, or the party charged or his attorney, having seven days' notice of the time and place appointed for taxation, shall neglect to attend, the registrar shall proceed to tax the bill *ex parte*, and the amount allowed by him only shall be recovered: provided always, that every action brought in the court of any judge in ordinary by any attorney or solicitor for work done in any other court, or in any matter not connected with any cause in the court of any judge in ordinary, shall be brought according to the course of the law of the realm and the provisions of this act.

The intended *jurisdiction* of the courts are thus described:

* We should like to see this table of fees, in order to compare it with the present fees on debts under 20*l.* Ed.

15. That every such judge in ordinary shall have cognizance of and shall try, in the manner hereinafter directed, all actions of assumpsit, covenant, and debt, whether the debt be by specialty or on simple contract, and all actions whatever in the nature of actions for the recovery of debt, and all actions of trespass or trover for taking goods and chattels, provided the sum sought to be recovered shall not exceed *twenty* pounds: all actions of personal tort, and actions in the nature thereof, whether the same be for assault, or assault and battery, or false imprisonment, or slander by words, or for libel, or seduction, or criminal conversation, or false representation of character, advocacy, or property, or for malicious prosecution, or for maliciously arresting or holding to bail, or for maliciously issuing out a commission or fiat in bankruptcy, or for any other tort whatsoever to the person or to personal property, provided the damages sought to be recovered shall not exceed *fifty* pounds: provided always that no action shall be tried by any such judge in ordinary where in the title to land, whether of freehold, copyhold, leasehold, or other tenure whatsoever, or to any tithe, toll, market, fair, or other franchise, shall be in question, unless both parties shall sign a memorandum stating that they believe such title to be in question, and are willing to have it tried by any such judge: Provided also, that if any answer shall be filed with the registrar, whereby any title to land as aforesaid, or to tithe, toll, market, fair or other franchise, shall come in question, the cause shall cease before the judge in ordinary upon the party who shall put in such answer verifying the matter of the same upon oath, and the costs of the other party shall be allowed and taxed as herein-after directed, unless both parties or their attorneys shall sign a memorandum agreeing that the cause shall proceed before the said judge.

16. That if both parties shall agree, by a memorandum signed by them or by their attorneys, that the judge in ordinary shall have power to try any of the actions herein-before respectively mentioned, in which the sum sought to be recovered shall exceed the sum of twenty pounds or fifty pounds, herein-before limited in the case of such actions respectively, or any action in which the title to land, whether of freehold, copyhold, leasehold, or other tenure, or to any tithe, toll, market, fair, or other franchise, shall be in question, then and in such case the said judge shall have jurisdiction and power to try such action: Provided always, that the said parties or their attorneys shall state in their said memorandum of agreement that they know such cause of action to be above the said sums respectively, or that they know such title to come in question in such action, and provided that such memorandum shall be filed with the registrar at the time of filing the demand of the plaintiff as herein after directed; provided also, that all local actions to be tried before any judge in ordinary, with the consent of the parties, shall be brought and tried in that jurisdiction only in which the lands, tenements, or heredita-

ments are, in respect whereof such actions shall be brought, unless the parties shall, by themselves or their attorneys, signify their consent in writing that the action shall be brought and tried in some other jurisdiction, wherein either the plaintiff or the defendant resides.

In the following clause, where the plaintiff and defendant do not reside within the same district, the plaintiff may bring his action in *any of the Superior Courts of Common Law*:

17. That all actions to be brought in pursuance of this act shall be deemed to arise and shall be tried within the jurisdiction of the judge in ordinary within whose jurisdiction the plaintiff or any one of the plaintiffs, and also the defendant or defendants, shall reside; and in case the plaintiff or some one of the plaintiffs shall not reside within the same jurisdiction as the defendant or defendants, then it shall be lawful for the plaintiff or plaintiffs, to bring his or their action before the judge in ordinary within whose jurisdiction the defendant or defendants shall reside, or in *any of her Majesty's Superior Courts of Common Law*; and where, in case of persons jointly liable, all the persons so liable shall not reside within the jurisdiction of the same judge in ordinary, it shall be lawful for the plaintiff or plaintiffs to bring his or their action before any judge in ordinary within whose jurisdiction any of the persons so jointly liable shall reside, by serving such last mentioned person or persons with a demand in the manner hereinafter mentioned; and such last mentioned person or persons may serve the other person or persons so jointly liable with notice of such demand, in order that he or they may appear and join in defending such action: Provided always, and there is hereby reserved to the person against whom execution may have been issued any right which he may have to demand contribution from the other person or persons jointly liable with him; and in case he shall have caused such other person or persons to be personally served with a notice of the plaintiff's demand in such action ten days before the day appointed for appearing and answering to the same, the judgment recovered against him in such action shall be admissible in evidence in any action for contribution afterwards brought by him against the person or persons so personally served by him as aforesaid, for the purpose of proving their liability to such contribution; but in case he shall not have caused such other person or persons to be personally served as aforesaid, then the liability of such person or persons to contribution shall be proved in the ordinary manner.

The following clause also contains an important *exception* to the Local Court jurisdiction:

18. That from and after the commencement of this act, if any action shall be brought in any of her Majesty's Superior Courts of Com-

mon Law for any cause for which an action might, without the consent of parties, have been brought, in pursuance of this act, before any judge in ordinary, save and except where the power of suing in the said superior courts is herein-before reserved, and the plaintiff in such action shall recover no more than twenty pounds, then and in such case the plaintiff shall have judgment only for the sum so recovered in such action *without any costs whatsoever*, unless the defendant or defendants in such action, shall have consented, by a memorandum signed by him or them, or his or their attorney, to the action being brought in one of the said superior courts, or unless such action be for any tort, and the judge before whom the same shall be tried shall *certify* on the back of the record that the action was fit to be brought in such Superior Court.

The *Courts of Request* are excluded, and demands must not be *split*.

19. That from and after the commencement of this act, no action shall be brought or proceedings had in any court of conscience, or court of requests, or other court for the recovery of small debts within the limits of the jurisdiction of any judge in ordinary, for any matter whereof such judge has jurisdiction.

20. That it shall not be lawful to split or divide any cause of action for the purpose of bringing the same within the jurisdiction of any judge in ordinary; and in case it shall appear to the said judge, in any stage of the proceedings, that any cause of action has been so split or divided, he shall dismiss the action brought thereupon with costs, unless the plaintiff or his attorney shall sign a memorandum, to be filed with the registrar of the court, undertaking to accept such sum of money as the court is by this act empowered to adjudge in full of the whole of his demand in respect of the cause of action so split or divided; and thereupon the plaintiff shall, upon proving his case, recover to an amount not exceeding that which the court is by this act empowered to adjudge, and such judgment shall be a full discharge of all demands.

The *mode of proceeding* is thus provided for; but it will be found that many of the proceedings will be more expensive in the Local than the Superior Courts.

21. That every action to be brought in the court of any judge in ordinary shall be commenced by a demand in writing, in which demand the plaintiff shall shortly, and according to the truth of the case, set forth his cause of action, whether for debt or damages, and shall also state the place of abode of himself and of his attorney, if he sue by one,^b and the place of abode of the defendant, and shall cause one copy of such demand to be filed with the registrar of the said court, three weeks before the sitting of the court at which the

^b Is this in any respect an improvement on the writ of summons? *Ed.*

cause is to be tried, and such registrar shall paste the said copy in a book to be by him kept for that purpose, and shall set down in such book the time and place for the trial of the cause; and a copy of such demand shall be served upon the defendant by a messenger of the court three weeks before the sitting of the court at which the cause is to be tried; and at the foot of such copy a notice shall be given of the time and place at which the plaintiff intends to try the cause, and that, in default of the defendant appearing by himself, or his counsel or attorney, and answering at such time and place, the trial will proceed in his absence: Provided always, that the place specified in such notice as the place of trial, shall be the proper place of trial according to the provisions of this act.

22. That the copy of the plaintiff's demand containing such notice as aforesaid, hereinbefore directed to be served on the defendant may be served either by delivering such copy to the defendant, or by delivering such copy to the wife or servant of the defendant, at the defendant's usual place of abode, provided that the purport of such demand and notice be at the time of such service explained to the defendant or other person to whom the same may be delivered as aforesaid; and in case the messenger who shall be employed to serve the copy of such demand and notice shall demand admittance into the house where the defendant usually resides, and such admittance shall be refused, it shall be lawful for him to put such copy into the house, or to fix such copy upon the door of the house, and the same shall in such case be deemed to be good service upon the defendant.

23. That the judge in ordinary shall not permit any cause to be tried before him until it shall be proved to his satisfaction that a copy of the plaintiff's demand, containing such notice as aforesaid, has been duly served upon the defendant, according to the provisions of this act, unless where the defendant shall have served the plaintiff or his attorney with an answer in writing, as herein-after mentioned, or shall by himself or his attorney appear at the trial for the purpose of defending the action, or shall before the trial have made any application in the cause to the judge in ordinary.

24. That the defendant, if he shall so think fit, may serve upon the plaintiff or his attorney, within eight days after the service of the plaintiff's demand, an answer in writing, setting forth shortly, and according to the truth of the case, the nature of his defence; and if he shall not within such eight days so serve the plaintiff or his attorney with such answer, he shall only be allowed at the trial, by way of defence, to insist upon and give in evidence matter in denial of the cause of action, but not any special matter which confesses and avoids the cause of action, nor any matter in justification, unless the plaintiff shall consent to his so doing; and in case the defendant shall at the trial apply for leave to make such special defence as aforesaid, the judge in ordinary may, if he shall so think fit, postpone the trial,

upon the defendant paying to the plaintiff the costs of the day; and in case the said judge shall postpone the trial, the defendant may either then and there, *ore tenus*, state in Court the special ground of his defence, which shall be taken down in writing by the registrar or his clerk, and a copy thereof furnished to the plaintiff or his attorney, at the expence of the defendant, or the defendant may, within eight days after such postponement of the trial, serve the plaintiff or his attorney with an answer in writing, containing the special ground of his defence.

25. That in all cases of actions brought before any judge in ordinary, other than and except actions for assault, or assault and battery, or for slander, libel, false imprisonment, malicious prosecution, malicious arrest, or holding to bail, or for maliciously issuing out a commission or fiat in bankruptcy, or for seduction, or criminal conversation, it shall be lawful for the defendant, after being served with the demand of the plaintiff, to make a tender to him of a sum by way of satisfaction of his demand, and if the same shall be refused by the said plaintiff, to pay the same into Court to the registrar, or to pay into Court a sum by way of satisfaction of such demand without any previous tender thereof to the plaintiff, giving notice in either case to the plaintiff or his attorney of such payment into court; and if the judgment shall be entered against the defendant for no more than the sum so tendered and paid into court, or so paid into court without any previous tender, the plaintiff shall pay to the defendant the costs by him incurred after the tender and refusal, or after the notice of such payment into court without a tender, as the case may be, such costs to be taxed and recovered as herein-after directed, and shall take the money paid out of court, but shall be entitled to recover his costs from such defendant incurred up to the time of such tender as aforesaid, or of such service of notice of payment of money into court, as the case may be; Provided always, that where any person against whom any action shall be brought for any thing done in pursuance of any act of parliament, or in the execution of his office, or otherwise, is now by law enabled to tender amends or pay money into court in any case not mentioned in this act, nothing herein contained shall deprive such person of such right, power, or privilege.

26. That after any such answer as aforesaid shall have been served on or furnished to the plaintiff, the trial shall proceed upon the demand and answer, without any further pleading or formal joinder of issue.

27. Forms to be followed in demands and answers.

28. Power to enlarge time for answering, and for postponing trial.

29. That in all actions of assumpsit, covenant, and debt, whether the debt be on specialty or on simple contract, and in all actions whatsoever in the nature of actions for the recovery of debt, and in all actions of trespass or trover for taking goods and chattels, brought

ing the subject-matter of such action, and for the defendant, after being served with such demand, to apply to the said judge for leave to examine the plaintiff upon his oath touching the same; but before any such examination shall take place, a week's notice shall be given to the party to be examined or to his attorney by or on behalf of the party applying for such examination; and all such examinations shall be had before the judge in ordinary at his chambers, in the presence of the counsel or attorneys of the parties, if they think fit to attend, and shall be taken down in writing by the registrar or his clerk, and signed by the parties; and both parties, in case both are to be examined, shall be examined at the same meeting, and one party shall not be at liberty to examine the other party without being subject to examination himself; and either party may by himself, or by his counsel or attorney, examine the other party; and after any such examination the said judge may, if he shall think fit, enlarge the time for the next step of procedure; and if either party shall not attend at the time appointed for such examination, the other party may apply to the said judge to enlarge the time for examination or to postpone the trial; and the said judge may make such order thereupon as to him shall seem meet; and the costs incident to such enlargement or postponement as aforesaid shall be in the discretion of the said judge.^c

30. That if either party in any cause shall, after due notice, neglect to attend at the time and place appointed for the examination of such party before any judge in ordinary, and no sufficient excuse be made for such non-attendance, it shall be lawful for the said judge to order such party to appear at such time and place as he shall think fit to appoint, and in case such party shall not or on appearing make a sufficient excuse, or in case he shall fail to appear in pursuance of such order, to fine such party in any sum which the said judge shall think fit to order, and to cause such fine to be paid over to the opposite party.

31. That every judge in ordinary shall hold his sittings for each of the districts within his jurisdiction at the times and places to be appointed as herein-before mentioned for the trial of causes therein, and shall sit from day to day for the trial of such causes until the expiration of the time appointed for the holding of such sittings, unless the whole number of causes shall be sooner disposed of.

Of Trials without Jury.

32. That if the amount claimed in any cause do not exceed five pounds, or if both parties in any cause wherein the amount claimed exceeds five pounds, shall agree between themselves not to try their cause by means of a jury, but only by the judge in ordinary, and

^c There is a fine field here for harassing and expensive proceedings. Ed.

said judge shall himself try the cause without any jury.

33. That if both parties in any cause pending before any judge in ordinary shall agree to a statement of the facts in the cause, it shall be lawful for them to take the judgment of the said judge upon such statement, without any trial, subject always to such appeal and on such terms as are hereinafter mentioned.

34. That all actions (except in the cases herein-before last mentioned) whereof any judge in ordinary has cognizance by virtue of this act shall be tried by such judge and a jury of six persons, according to the course of the law of the realm, except in so far as it is otherwise provided by this act.

35. Juror's book.

36. Summoning of juries.

37. Ballot and challenge of jurors. Jury to consist of six. *Jury de circumstantibus.*

38. Fees to jurors.

39. Penalty on jurors for non-attendance.

40. Summons of witnesses. Fine for non-attendance.

41. Penalty for witnesses or parties refusing to be examined.

42. Punishment of false swearing. Prosecution for perjury by direction of the judge, and at the public expence.

43. Quakers to affirm. Power to judge to administer, oaths, &c.

As to Written Documents it is provided,

44. That if either party intend to give in evidence any paper or writing, he shall give notice to the other party or his attorney, four days at the least before the sittings at which such action is to be tried; and the said judge may order him to show the paper or writing so intended to be given in evidence to such other party or his attorney, at such last-mentioned party's expence; and no paper or writing shall be given in evidence which is not specified in such notice, unless proof shall be given to the satisfaction of the judge that it did not come to the knowledge of the party, or his attorney or agent, before the fourth day previous to the sittings at which it is proposed to be given in evidence, or that such party had not the means of proving it before such fourth day.

Trials in Private.

45. That if any action shall appear to be fit to be tried out of court, in respect of its involving any matter of account, the judge shall and may, with the consent of both parties or their counsel or attorneys, proceed to try the same in private, at such place as he may think proper to appoint.

46. Proceeding where plaintiff or defendant does not appear at the trial.

47. Where defendant's non-appearance is owing to the want of personal service, he may move for new trial.

48. Judgment, costs, and execution.

49. Defendant against whom a judgment has been given may be examined on oath, by the judge, as to his property. Proceeding for refusing to attend or answer before the judge.

50. Judge may assign such defendant's property to registrar for payment of the judgment debt.

51. Registrar to dispose of the property in discharge of plaintiff's judgment, and to pay over the surplus (if any) to defendant.

52. Property assigned to registrar to vest in his successor. Action brought by registrar not to abate by his death, &c.

53. Judge may direct the sum recovered to be paid by instalments.

54. Time of execution and stay thereof on notice of appeal.

55. *Appeal.*—That if either party shall be dissatisfied with the determination or direction of the said judge in point of law, or upon the admission or rejection of any evidence, such party may appeal from the same to any of the Superior Courts of common law at Westminster, two or more of the puisne judges whereof shall sit out of term as a court of appeal for that purpose; provided that such party shall, within ten days after such determination or direction, give notice of such appeal to the other party or his attorney, and also give security for the costs of the appeal, whatever be the event, and for the amount of the judgment if he be the defendant and the appeal be dismissed; provided nevertheless that such security, so far as regards the amount of the judgment, shall not be required in any case where the judge in ordinary shall have ordered the party appealing to pay the amount of such judgment into the hands of the registrar, and the same shall have been paid accordingly; and the said Court of Appeal may either order a new trial on such terms as it thinks fit, or may order judgment to be entered for either party, as the case may be, and such order shall be final.

56. Form of appeal.

57. No writ of error, &c.

58. Rules of practice may be framed by the judges of Westminster hall for the regulation of the courts of judges in ordinary. Copy of such rules to be laid before parliament.

The following are the very singular provisions concerning a proposed

COURT OF RECONCILEMENT!

59. That it shall be lawful for any person who hath or shall have any claim or demand against any other person either at law or in equity, in respect of any debt, or matter in the nature of debt, to cite the person against whom he has or shall have such claim or demand to appear before the judge in ordinary having jurisdiction where such person being the adverse party resides, to have the matter in dispute or which may come into dispute between them heard and advised upon by the said judge, which hearing and advice shall be called proceeding for reconciliation; and such judge

shall appoint the times when and the places where he may please to sit and hold his court of reconciliation, provided that such court of reconciliation shall be holden at a convenient time during or after the ordinary sittings of the said judge in each place within his jurisdiction, notice being previously given thereof in some newspaper circulating within his jurisdiction.

60. That the party citing shall first obtain leave from the said judge to come before him at the time and place to be named in the citation, and shall serve the citation on the other party two weeks at least before the said time of appearance; and the citation shall state shortly the matter of the claim or demand which the person citing hath against the other party, with the time and place whereat the judge in ordinary is to sit and hear and advise in the matter.

61. That the party so cited shall, at his own election, appear or not before the said judge, but he shall, within one week after being so cited, serve the party citing with a notice, in which notice he shall state whether he intends to appear or not; and such notice, with the proof of service of citation, may be given in evidence against the party cited in any suit at law or in equity which may be brought by the party citing, for the purpose of proving that the party cited refused to appear before the judge in ordinary in a court of reconciliation.

62. Costs of nonappearance and failing to give notice.

63. That when the parties appear before the judge in ordinary, he shall hear them state the matters of their respective claims or demands, and defences or answers, in the presence of each other, and shall give them his opinion and advice thereupon; and it shall be in their option to follow and abide by this advice or not, as they shall think fit; and in case they shall agree to abide by such advice, the substance thereof shall be reduced into writing by a memorandum, which shall be signed by the parties, and entered in a book of the registrar, to be called "the reconciliation book;" and such memorandum shall be final and binding on the said parties, and shall have the effect of a covenant under seal in all courts whatever, and an examined copy thereof may be given in evidence; and the party to whom any sum of money is by such memorandum agreed to be paid shall have execution, as in the case of a judgment in an action before the judge in ordinary, for such sum against the party agreeing to pay, and not paying it at the time agreed upon in such memorandum; but if a party shall have agreed to do any other thing, and shall fail to do it, the other party shall not have execution, but shall and may sue upon such memorandum of agreement, and for breach of it, as upon a covenant under seal, and for breach of such covenant: Provided always, that it shall be lawful for the judge in ordinary before whom the parties shall have appeared, after he shall have heard and advised upon the matter by them stated, to adjourn, if he think fit, the further consid-

ration thereof to the next sitting of the court of reconciliation, at which sitting the said parties shall declare whether or not they are minded to abide by his advice.

64. That when any parties shall have been heard in any matter before any judge in ordinary, sitting in a court of reconciliation, and either of the said parties shall sue the other upon the same matter before the said judge by way of action, such party shall annex to his statement a notice, to be filed with the registrar along with the said statement, that the cause of action is some matter already heard before the said judge; and if the party suing shall omit to annex such notice, the party sued may annex it to his answer; and the registrar, upon such notice being so annexed by either party, shall make out a certificate of the matter thereof, whereupon the proceedings before the said judge shall cease, and the matter of the said suit shall and may be carried before a judge in ordinary of some adjoining county, notwithstanding that the party sued shall not reside therein, any thing in this act to the contrary thereof in anywise notwithstanding; and the costs incurred by beginning the proceedings before the first-mentioned judge in ordinary shall be costs in the cause.

65. Proceedings not to be liable to stamp duty.

The bill next directs the judge in ordinary to assist in administering the

BANKRUPT LAWS.

66. That it shall be lawful for the Lord Chancellor, and also for the Master of the Rolls, each of the Vice Chancellors, and each of the masters of the Court of Chancery acting under any appointment by the Lord Chancellor to be given for that purpose, as and when each of them shall see fit, to issue any fiat in bankruptcy, to be prosecuted elsewhere than in the Court of Bankruptcy, to any one or more judge or judges in ordinary, either together with or without any one or more registrar or registrars to be appointed under this act; and that any one of the judges or registrars so to be named in any such fiat shall have, perform, and execute all the powers, duties, and authorities now vested in one or more commissioners of bankrupts acting under any fiat now directed to the said Court of Bankruptcy or in any sub-division court of such commissioners.

67. That it shall be lawful for the said Lord Chancellor, Master of the Rolls, each of the Vice Chancellors, and each of the Masters of the Court of Chancery acting as aforesaid, if they shall respectively think fit, to insert in any such fiat as aforesaid, in addition to the name or names of such judge or judges, registrar or registrars, the name or names of some one or more barrister or barristers, solicitor or solicitors, residing at or near the place where such fiat is to be prosecuted, any one of whom, in the event of the death, sickness, or absence of the judge or judges, registrar or registrars, named in such fiat, shall

have, perform, and execute all the powers, duties, and authorities, as a commissioner of bankrupt under such fiat, which by virtue of this act shall be then vested in the judge or judges, or registrar or registrars, named in such fiat, until in the case of death a new fiat shall be issued, or until in the case of sickness or absence the judge or judges, registrar or registrars, so named in such fiat as aforesaid, shall recover or return: Provided always, that no such commissioner shall be capable of acting in the execution of any of the powers and authorities given by this act until he shall have taken the oath by law required to be taken by commissioners of bankrupt in the presence of one of his Majesty's justices of the peace, which oath such justice is hereby empowered and required to administer.

68. Fees of commissioners.

69. Power to judge in ordinary to enlarge time for bankrupt's surrender. Power to adjourn meetings.

70. Power to appoint official assignees in country bankruptcies.

71. Estate to vest in official assignee jointly with the other assignees.

72. Payments in lieu of present fees to be made by official assignees to the registrar of the judge in ordinary, and carried to a particular fund.

73. Party committed by country commissioner may move the Court of Review on a certified copy of the warrant of commitment.

74. Appeal from Court of Review in such case.

75. Not to deprive party of habeas corpus.

The next branch of the bill relates to the proposed despatch of

EQUITY BUSINESS.

76. That it shall and may be lawful for the Lord Chancellor, Master of the Rolls, and Vice Chancellors, in any cause or matter which shall be brought before them respectively, when it shall appear that any accounts or inquiries that may require to be taken or made in any such cause or matter may be more effectually taken or made by means of a *vidæ voce* examination of witnesses or parties in the country, to direct that such inquiries or accounts, or any portion thereof, shall be taken or made by one of the said judges in ordinary, and to give such directions as to the time and mode of taking the same as shall be deemed expedient.

77. That in case any of the parties who are authorized to attend before any master in ordinary of the High Court of Chancery, on the taking or prosecuting any accounts or inquiries now pending or which shall be hereafter pending before any such master, shall desire that any of such inquiries or any of such accounts shall be taken by one of the said judges in ordinary, and such master shall certify to the judge by whom such inquiries or accounts were directed to be made or taken that the same can be more effectually taken or made by means of a *vidæ voce* examination of witnesses or parties in the country,

and that it will be for the benefit of the parties interested that the same should be taken or prosecuted before one of the said judges in ordinary, it shall and may be lawful for such judge of the High Court of Chancery, on motion or petition on notice, if he shall see fit, to refer such inquiries or accounts, or any of them or any portion thereof, to one of the said judges in ordinary, and to give such directions as to the time or mode of prosecuting such inquiries or taking such accounts as shall be deemed expedient.

78. No appeal on the ground of accounts or inquiries having been sent to judges in ordinary.

79. Same rules of proceeding to be observed as in master's office.

80. Power for judges in ordinary to examine witnesses and parties *viâ voce* on inquiries directed to them.

81. Attendance of witnesses.

82. *Report and Evidence to be filed.*—That the evidence and examinations to be taken on such *viâ voce* examination shall be accurately taken down by such judge in ordinary; and that the evidence and examinations taken before any such judge in ordinary, whether taken *viâ voce* or on interrogatories, and the affidavits, if any, carried in before him, shall be filed or deposited, together with the report of such judge in ordinary, in the proper office for filing reports in the court in which the cause or matter on which such reference shall have been made is pending, to be produced from time to time as the court shall direct.

83. *Copy of any part of report &c. may be taken.*—That no person shall be compelled or required to take any copy of any such report, or of the depositions, or evidence or evidences, or affidavits filed therewith; and that any person shall be at liberty to inspect the same, and to take a copy of any part of any such report, depositions, evidence, or affidavits that he may require.

84. Copies of any parts of proceedings may be taken.

85. Objections and exceptions may be taken to reports of judges in ordinary, unless special directions given on the subject.

86. Directions of the court to be taken on report when confirmed.

87. Power for judges in ordinary to administer oaths.

88. Power to take pleas, answers, and examinations.

89. Judges in ordinary constituted examiners of witnesses in the country.

90. All witnesses may be examined before judges in ordinary who might be examined before examiners or commissioners.

91. Examination of witnesses.

92. Judge may call on parties to be present at examination.

93. Lord Chancellor to make orders as to sending up depositions, answers, &c. from the country.

94. Attendance of witnesses enforced.

95. Power for Lord Chancellor to make general orders as to mode of examining witnesses, &c.

96. Lord Chancellor to issue rules of practice.

97. Schedule of fees to be received on account of equity business done by judges in ordinary.

98. Limitation of actions against persons for any thing done under this act.

It is scarcely necessary at present to retrace the ground regarding this Bill over which we went on the former occasion. It will be sufficient to remind our readers of the principal points.

1. Local Courts are rendered unnecessary by the facility of communicating with the metropolis.

2. Legal proceedings are better conducted in London than the country.

3. The costs in actions *under twenty pounds* are reduced as low as possible.

4. It is cheaper to try a cause in London than in the country.

5. There is danger that the resident local judge will not be impartial, or not believed to be so.

6. It is not probable that sufficiently competent judges will be induced to accept the office.

7. There will be a want of uniformity in the decisions both on law and practice.

8. There will be an enormous increase of petty litigation.

9. An inferior class of attorneys will resort to these courts.

10. The expense of new courts, judges, officers, travelling, &c. will far outweigh any incidental advantage of the change.

The costs of a writ, where the debt does not exceed 20*l.*, is as small as could be allowed to the practitioners in the proposed courts, except that the disbursements in the Superior Courts are larger. Let the fees out of pocket be reduced, and the business may then be conducted in London as cheap as in the country. Formerly, on issuing a bill of Middlesex, the attorney paid only 6*d.* in term, and 10*d.* in vacation; and 3*s.* 1*d.* on a *latitat*, or 2*s.* 9*d.* on a *capias*. The writ of summons costs 5*s.* It may not be recollected by all our readers that the attorney charges only 12*s.* 6*d.* for the writ, and that his profit is scarcely 7*s.* The machinery of the Superior Courts is competent to work small debts

as well as large, and there is no necessity to create new judges, registrars, and other officers all over the country.

The great point to be gained is, that if there *must* be a bill, that it should not abolish the *concurrent jurisdiction* of the Superior Courts. Where the plaintiff does not reside in the same district as the defendant, the 17th section enables him to bring his action either in the Local Court of the defendant's residence *or in any of the Superior Courts of Common Law*. Why should not this right be extended to all cases? The creditor may be safely left to make his own choice: he will not sue in a dear court unless he has reason to be dissatisfied with the cheap one. We are not aware that the merchants and traders are now dissatisfied with the Common Law Courts; but if they are, they may be left to consult their own interests as to the courts to which they think proper to resort.

SUBSTITUTE FOR LOCAL COURTS.

AMONGST the conflicting struggles and efforts which are now making to expedite legal proceedings and diminish their expense, we must not lose sight of the main object to be attained in the *vast majority* of actions—namely, the recovery of debts to which there is no *real defence*. Where there are disputed facts to be tried, or a question of law to be settled, we presume no one is desirous of abolishing those Courts which, by experience, have been found to be the most satisfactory.

The first point to be ascertained is, whether there is any real defence: if there be, the party has a right to be heard before a competent tribunal. If there is no defence, the plaintiff should have justice tempered with mercy: the defendant should be allowed reasonable time, and neither party be put to much expense. It was well observed by Lord Abinger (then Sir James Scarlett) in his letter to the Common Law Commissioners, that

“Daily experience proves that the time which the defendant really requires to prepare an honest defence, will be anxiously sought by the distressed debtor, who has *no defence*, to put off the day of payment: for this purpose he avails himself of every expedient which the practice of the court allows to obtain delay. Unhappily he attains his object at present, very often by a

sacrifice of his own means, as well as those which the humanity of his friends will supply, in many cases sufficient to have paid the original demand; nor is this the only grievance, the expenses of the plaintiff are in the mean time increasing in the same ratio, till at last he finds he has incurred as much expence as his original demand, in many cases a great deal more, to make his debtor insolvent.”

We believe that a multitudes of debts are lost without any attempt to recover them, in consequence of the apprehension of heavy costs. This occasions the clamour for Local Courts; but the clamourers mistake their wants: they require a means of recovering cheaply, and without risk of adding much to their loss, undisputed debts, which need no judicial inquiry or proof. The returns to Parliament shew that nineteen out of twenty actions in the Superior Courts are for debts of this kind. Now a trial before a jury, whether of twelve men or six, is a cumbersome and costly apparatus to get in such debts, and the great object therefore is to prevent defendants pleading in these cases by giving them motives to refrain from it, and if a plan could be found to effect this, the popular cry for Local Courts would be no longer heard, particularly now that issues of small amount can be sent to the sheriff to determine, and that new rules of pleading have reduced the expenses of *bond fide* litigation to the lowest point consistent with sound judicial investigation.

The following scheme, which we have received from an intelligent practitioner, has for its object the prevention of this groundless and vexatious resistance to actions for undisputed debts, by compelling a debtor in the first instance to consider the claim made on him and his own circumstances—by taking away all necessity and excuse for a groundless plea—by making such a plea more clearly and tangibly a breach of moral duty—by giving the honest debtor an opportunity to render his means available—by punishing the man who inexcusably shall have defended a just action, and wilfully increased his creditor's loss, and by these means affording to the creditor a *guarantee* in suing for his debts, and to the debtor a protection against an oppressive creditor or attorney.

If it *would* accomplish these ends, there would be no occasion to invade the jurisdiction of the Superior Courts, and the purposes of the Local Courts would be answered by it: it is extremely simple, and would not cause confusion in practice—it makes no new offices, and requires no com-

pensation—it extends to debts of every amount, and, though it might reduce the common law profits of attorneys (a consideration not to be disregarded by the public, who are deeply interested in the respectability of the profession), it would place those profits on a wholesome footing; and, if it rendered the Local Courts unnecessary, would save the profession from the brood of pettifoggers which that system would bring into existence.

Some will object to the plan of giving the debtor, upon his confessing the debt, a month's time for payment; but be it observed that a judgment cannot now be obtained sooner; and the quick succession of declaration, plea, issue, and notice of trial, to which a debtor, wishing for time, must now submit, frequently disables him from paying any thing: and if it be said that the fear of these expences will make a debtor pay more promptly, the answer is, that where there is ability to save expence, the debt would be safe at the end of the month, whilst in the case of a man without present means, the advantage both to debtor and creditor, of arresting the course of the costs, is too obvious to enlarge upon.

The plan does not disturb the present practice where the debt is in dispute; actions for debt are, at their commencement, subjected to a test, which sifts the defendable from the defenceless ones, provides for the latter by economising their expence, and lets the former pass through to proceed as heretofore.

With regard to the punishment for vexatiously pleading: the insolvent court at the present time imprisons for this offence, but so many innocent men are forced to plead, that it is not considered a moral delinquency, and under the existing practice it is difficult to find out where the *crimen* begins. Under the bankrupt law there is no punishment for wilful pleas, and therefore bankrupts escape. The present scheme clearly defines the offence in question, and proposes a punishment as the condition of receiving relief by insolvency or bankruptcy from the pressure of debts. This punishment may be modified according to the laws hereafter to give that relief.

The following is the sketch of the bill for facilitating the recovery of debts in the manner proposed:—

1. That every writ of summons issuing from the Courts of law at Westminster, as the commencement of any action for the recovery of any debt, shall be in the form marked No. 1, in the schedule to this act, having the notice or warning in the form specified thereto sub-

joined, and on the service of such writ, the defendant shall likewise be served with a detailed particular of the demand.

2. That within ten days after service of such writ of summons and particular of demand, or within eight days from the service of the demand of appearance, inclusive of the days of service, the defendant shall, if he purpose to defend such action, enter an appearance to such writ of summons with the proper officer for receiving the appearance thereon; and at the same time shall file with such officer a declaration, signed by him the said defendant, that he believes that he hath good ground of defence to the action on the merits, which declaration shall be styled, "An Averment of Merits," in the form No. 3, of the schedule to this act; and the signature of the defendant to such declaration or averment shall be witnessed by an attorney of one of the Courts of Westminster, and an affidavit of such signature and attestation shall be filed with such averment.

3. That where it shall be made to appear to one of the judges of the Courts of Westminster to be necessary or reasonable that such averment of merits should be signed by the attorney of the defendant for and on his behalf, then such judge shall so order; and the averment so signed (the signature thereto being verified by affidavit) shall be sufficient for all the purposes of this act; and so likewise if the plaintiff's attorney or agent shall consent to the defendant's attorney signing such averment for and on behalf of the defendant, then, upon the plaintiff's attorney or agent signing his consent under the averment, the averment so signed (the signatures thereto being verified by affidavit) shall be sufficient for all the purposes of this act.

4. That if within the time allowed, an appearance and averment of merits be not filed, the plaintiff shall cause to be served upon the defendant, either personally, or by leaving the same at his usual residence, or last place of abode, a demand of appearance and averment, requiring such appearance and averment to be entered within eight days from the service thereof, which demand shall be in the form marked No. 2, in the schedule to this act.

5. That if an appearance and averment be not entered pursuant to such demand thereof as aforesaid, the defendant shall be deemed to have confessed the debt, and the plaintiff shall be at liberty to enter the proceedings on a roll of the Court, in the form No. 6 of the schedule to this Act, and to tax the costs of the action, and the officer with whom such appearance and averment should, according to this act have been filed, upon affidavit of the personal service of the writ of summons and particulars of demand, and of the due service of the demand of appearance (with the writ of summons, a copy of the particulars of demand, and a copy of the demand of appearance thereto annexed), being filed with him, shall if such services shall appear to him to have been regularly made, and such costs duly taxed, certify on such roll that execution may issue for such debt and costs, and the plaintiff may then carry

such roll to the signer of the writs of execution of the proper court, who shall thereupon sign the writ of execution, keeping the said roll, and if required by the plaintiff, or his attorney, receiving also a minute or præcipe for docketing thereof; and the said signer of the writs of execution shall, from time to time, deliver over the rolls, and the minutes or præcipes of docket, to the clerk of the judgments of the court, who shall forthwith docket the judgments.

6. That in case it shall be made to appear by affidavit to the satisfaction of the court out of which the aforesaid writ of summons issued, or if in vacation, of any judge of either of the said courts that any defendant has not been personally served with any such writ of summons as hereinbefore mentioned, and has not according to the exigency thereof appeared to the action, and cannot be compelled so to do without some more efficacious process, then if it shall be shewn to such court or judge, that a copy of the writ of summons, and a detailed particular of demand for which the action is brought, has been left at the defendant's dwelling-house, or otherwise sufficiently served to the satisfaction of the court or judge, then and in any such case, it shall be lawful for such court or judge to order a writ of *distringas* to be issued, &c.

7. That the defendant having been served with process in manner hereinbefore mentioned, shall be at liberty within the time by this act allowed for his appearing and averring merits, in case such time shall expire sooner than thirty-one days inclusive from the service of the writ, to file with the officer with whom the appearance to such process would have been entered, a confession of the debt, and a submission to pay the same, together with the costs claimed, at the expiration of thirty-one days from the service of the writ of summons, including the day of such service, or of any less number of days; and thereupon the plaintiff shall stay all proceedings, until the period so limited for payment shall have elapsed, when if the defendant shall not have satisfied the debt and costs confessed, the plaintiff shall be at liberty to enter the proceedings on a roll of the court, in the form No. 7, of the Schedule hereto; and the officer with whom such confession shall have been filed, shall certify on the roll that execution may issue for the debt and costs confessed, together with such costs for the judgment, as by any rule or order of the said courts shall, from time to time, in such case be fixed, and execution thereupon shall issue, and the judgment roll be carried in, in the manner provided by the 8th section of this act. Provided always, that where such confession shall be filed after the expiration of the ten days allowed for appearance, and before demand of appearance served, and only the costs claimed by the writ shall be confessed, the plaintiff shall be at liberty to refer any farther costs to be taxed by the Master, and the same, when so taxed, shall be recoverable, under the said confession.

8. That after a defendant shall have filed a confession of the debt, in manner hereinbefore mentioned, it shall be lawful for any one of the Judges of the said courts, if any sufficient

cause can be shewn, to order such further stay of proceedings beyond the expiration of the time of payment limited by such confession, as in such case shall be reasonable; and if, after the filing of such confession as aforesaid, the plaintiff shall shew, to the satisfaction of any one of such judges, that the delay of execution till the time it might on such confession be obtained, would, by reason of the defendant meditating flight or a fraudulent removal of his assets, endanger the plaintiff's debt; then it shall be lawful for such judge, if he think fit, to order the judgment to be entered, and execution to issue thereon forthwith, any thing in this act, or in such confession contained to the contrary notwithstanding.

9. That the aforesaid confession of debt shall be in the form marked No. 4, in the schedule to this act, and shall be signed by the defendant, and shall be witnessed by his attorney, or by any other attorney of any of the courts of Westminster, acting therein as the agent of the defendant's attorney, and such signatures and attestations shall be verified by an affidavit to be thereunto annexed, and filed therewith, and no appearance by the defendant shall be requisite to give effect to such confession.

10. That after an appearance shall have been entered, with an averment of merits, the action shall proceed according to the present forms and practice, or other the forms and practice for the time being of the court in which such action shall be pending; provided nevertheless, that if the defendant, or there being two or more defendants, any one or more of them, shall suffer judgment by default of pleading, or shall make default in appearing on the hearing or trial of any issue raised by him or them in law or fact; or if, on the defendant or defendants appearing upon the hearing or trial of any such issue, the judge or court shall certify that the filing of the averment by such defendant or defendants, or any one or more of them, was vexatious, and without reasonable and probable cause, then the plaintiff shall be at liberty to cause judgment to be entered up against such defendant or defendants, in case of default, with a suggestion on the roll of such default made after an averment of merits; or in case of such certificate granted by the judge or court on the hearing or trial of such issue as aforesaid, with a suggestion of such certificate; and he it enacted, that where by any such judgment by default or the aforesaid certificate of a court or of a judge, or by other satisfactory evidence, it shall appear that the averment of merits was filed vexatiously, and without reasonable and probable cause, and the person who shall in such manner have averred merits, shall apply for the benefit of any act for the relief of insolvent persons, such person shall not have or be allowed the benefit of such act, until he shall have submitted to such sentence of imprisonment as the court or commissioner to whom such application shall be made upon such proof, as aforesaid, tendered by any creditor or creditors of such person, shall think fit to adjudge, and which such court or commissioner is hereby empowered and required

to adjudge, so as the same shall not exceed months nor be less than one month, for each offence; and farther, that *where any person shall in like manner have averred merits vexatiously, and without reasonable and probable cause, and shall become bankrupt, and shall apply to any commissioner or commissioners, acting under the authority of any act now or hereafter to be in force concerning bankrupts, for the signing by such commissioner or commissioners of the certificate of discharge of such bankrupt under the fiat against him, such commissioner or commissioners shall on sufficient proof of such vexatious averment tendered by any creditor or creditors of such person, and whether the parties, against whom the vexatious defence shall have been made, have or have not proved their debt or debts under the fiat, postpone the signing of such certificate until the expiration of such period of time as to him or them shall seem fit; so as such period shall not exceed the term of years, nor be less than months, from the time of such commissioner or commissioners' awarding such postponement.*

Various provisions are also suggested to carry out the plan in detail, but which are unnecessary to state at present. We cannot say that we altogether approve of this plan, but we think it deserving of consideration, and place it before our readers for that purpose. It has the merit of preserving the jurisdiction of the Superior Courts, but diminishing expence in cases which are supposed to belong peculiarly to the Local Courts.

MASTER DAX'S PLAN OF LAW REFORM.

We have procured a copy of a plan submitted to the Lord Chancellor by Mr. Dax, one of the Masters of the Court of Exchequer. It comprehends the appointment of three additional Common Law judges, and suggests the means of framing a satisfactory measure regarding Local Courts. The great experience of Mr. Dax, first as a practitioner, and subsequently as a master, entitles his suggestions to attentive consideration; and we, therefore, submit them to our readers, and we shall from time to time state our own views on this, and other plans before the public.

Mr. Dax treats not only of the scheme of Local Courts and the arrears of business in the Common Law Courts, but of the appellate jurisdiction of the House of Lords, and the registry Courts, and Trials of controverted elections.—He says

“To consider so many subjects, collectively, may at first sight appear inconsistent or inconvenient; but it is necessary so to do, for the reason, that one suggestion will be, that there

shall be an additional judge to each of the three Superior Common Law Courts; and it is material in the task I have undertaken, to make out the necessity of, and advantage to be expected therefrom; and which can only be done by showing what new duties will be imposed upon those Courts; and by submitting under one general view the following observations:—

1. As to the appellate jurisdiction.

The appellate jurisdiction of the House of Lords is of such ancient date, and of such a nature, that it must be considered as part and parcel of the constitution of the country; and it would be very difficult, if not impracticable, to withdraw it. The chief object should therefore be to make it as perfect and unobjectionable as circumstances will permit; and when it is considered what important cases are ultimately decided by that tribunal, it must be admitted that it ought to be as satisfactory as possible.

“It is unnecessary to point out the many objections that have from time to time been raised against that tribunal. It will be sufficient to say that there is greater delay in its decisions than ought to be. That it is inconsistent, inasmuch as it is scarcely more than an appeal from the Lord Chancellor to the Lord Chancellor,—and that it is upon the whole an unsatisfactory tribunal.

“I am not aware of any recent plan for improving that jurisdiction, except the one proposed by the present very able Lord Chancellor of Ireland, and which it may be presumed, therefore, is the best that has hitherto been suggested;^d but it will not be difficult to show in what respect that plan is objectionable. According to the newspaper report, that learned Lord Chancellor proposed, that the Appellate Court should consist of the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor. The first objection is the inconsistency of having an appeal in causes from the Master of the Rolls or the Vice Chancellor, sitting in their respective Courts to the Lord Chancellor, and then giving an appeal again (perhaps in the very same causes) from the Lord Chancellor sitting in his Court to the Master of the Rolls and Vice Chancellor sitting with him in the House of Lords. And I do not think that any Lord Chancellor would consent to have his decisions so revised. But I think there is another objection quite fatal to the plan. In all the endeavours that have hitherto been made to improve the equity tribunals, almost the first object appears to have been to lessen the delay so much complained of. Now, if the judges of the Court of appeal are to be the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor, the whole of the Equity Courts presided over by those learned judges, must be closed whilst the appeals are being heard in the House of Lords. And we know by experience (particularly in such cases as *Small v. Attwood*.) that the hearing of such appeals may last for a

^d This appears to have been written just before Lord Campbell's bills were brought in. ED.

very considerable time. This would in a fearful degree increase the delay in the Equity Courts, already so much deprecated. It appears to me that the two objections to which I have alluded are insuperable.

"The question how to construct the best appellate tribunal is no doubt one of difficulty, and scarcely any plan could be devised to which some objection may not be made. To some individuals any new plan may appear objectionable, for reasons which to other persons may seem quite the reverse. Admitting then the difficulty of the case, the question is what plan will be most free from objection, and the most advantageous?"

"I venture then to suggest that the Appeal Court shall consist of the Lord Chancellor, an ex-Chancellor, the Chief Justices of the Courts of Queen's Bench and Common Pleas, and the Chief Baron of the Exchequer, and *pro forma*, one or two lay lords. Probably, at the first view, this may seem open to objection upon two grounds, namely—first, that the Common Law judges could not be spared from their own Courts; and secondly, if they could, that they would not be the most eligible judges to sit in a Court of Equity.

"To the first objection I say, relieve the Chief Judges from the labours of the circuit. Not a great many years since, the two Chief Judges did not go the circuits; and I am of opinion they ought to be so relieved: their duties are most arduous at all other times, and I am not sure that it would not be better for them to preside in their Courts upon causes tried before their brethren on the circuit, than if tried there before themselves. During the circuits they might sit to hear the appeals, and if there be any time to spare, it would be a great relief if they gave their assistance at chambers, where the business during the circuits, is notoriously too much for any one judge, and occasions a grievous loss of time to attorneys attending there. Or they might sit in the Privy Council Committees, where, sometimes, it is difficult to make a Court.

"To the second objection I would beg leave to say, that I do not think it would be a valid one, more particularly when we know that some of the brightest ornaments on the wooll-sack have been taken from the Common Law Bar. And whilst the great seal was in commission, so recently as during the last reign, one of the commissioners was a Common Law judge: and upon many other occasions, Common Law judges have sat in the Equity Courts. The Lord Chancellor has also called in Common Law judges to assist him.

"Besides this, most of the suits will be found to be, in respect of real property, or upon questions affecting the real merits of the case, in which the chief Common Law judges cannot but be considered as perfectly and eminently qualified to decide.

"I think it will be admitted that delay in the delivery of judgments of a Court so constituted, would not be so great as is experienced at present. If the other judges should agree with the Lord Chancellor, in all probability no

delay whatever would take place; and in cases where there might be a difference of opinion, the assistance the Chancellor would derive from such distinguished colleagues, would probably shorten the delay.

"I conceive that only two of the Common Law judges need be present at the hearing of appeals. The Court then would at all times consist of four learned persons, that is to say, the Lord Chancellor, an ex-Chancellor, two of the chief Common Law judges and one lay lord; and when we look at the individuals who in the present day would be members of the Court, namely, the present Lord Chancellor, the present ex-Chancellors (among whom are Lords Brougham, Cottenham, and Campbell,) and the three present Chief Judges of the Common Law Courts, I venture to say, it would contain such an array of talent as would be wholly unrivalled in any court in Europe, and that it is impossible to make a better Court."

2. Mr. Dax next proceeds to the arrears of Business in the Common Law Courts.

"The arrears in the Court of Queen's Bench (he observes) are very grievous, and amount to a certain extent, to a denial of justice, at least for a time. In the Court of Exchequer, where it will be found that the Common Law business is equal to that in the Queen's Bench, there was scarcely a single case in arrear at the close of the last term. There must, therefore, in courts so very competent, be a reason for such arrears in one, and none in the other. I think the cause will be found in the exclusive jurisdiction of the Court of Queen's Bench in certain matters, particularly in Crown business. Now, I would ask, why it should be so exclusively confined? Would it not be reasonable that the other two courts should have their share of it? I do not think it would be so well to give concurrent jurisdiction to each court, as to confine particular departments to each court, as by the latter plan more uniform decisions in each department might be expected. I think, also, there is a way by which the present arrears in the Court of Queen's Bench might be got rid of. The principal arrear is in the New Trial Paper, and it is really enormous in extent. The way I would propose to get rid of it would be, by dividing the present list between the three Courts. That is to say, by sending to the Court of Common Pleas such cases as have been tried on the circuit before the Common Pleas judges, and to the Court of Exchequer, cases that have been tried before the Barons. This would be a great boon to the public, as I feel no doubt but the whole of such arrears might be disposed of within a comparatively short period. And were the courts once relieved, great care would no doubt be taken to keep them down in future. And what I have hereafter to suggest will give to the several courts ample opportunity of adjudicating upon such increase of business.

"I would here also suggest, that it would be advantageous to do away with the locality of

actions, so far at least, as to allow local actions to be tried in adjoining counties.

"It must appear a hardship, a grievance, and an absurdity, that a person living in the suburbs of London, and having a local cause of action against his neighbour, should be obliged to take his cause down to Guildford, or Maidstone, or Chelmsford, for trial, when the same might be as well or better tried in Westminster Hall, out of the hurry and trouble of an assize town, and at comparatively small expense. I presume, in early times, it may have been considered that no jury could so well try a dispute between two neighbours, as a jury of neighbours, but in the present day, I think the contrary opinion would prevail."

3. Mr. Dax then adverts to the more pressing subject of *Local Courts*.

"I am aware (he says) that much has been said in favour of local courts, in order that persons may have cheap and speedy justice at their own doors. And this is, in general, the chief argument in favour of local courts, and no doubt it seems plausible enough. I am free to admit that justice should be speedy, that it should be obtained at a reasonable cost, and I would say much more so than it is at present. But in admitting this, it is well to remember (as has been said by one of the judges of the present day) "cheap law may be, like many other cheap things, not worth the cost."

"If local courts were to be established all over the kingdom, as proposed by Lord Cottenham, without any appeal from the decisions of the judges of those courts, the inevitable result must be, that no one will know what the law is. The law in Northumberland may be very different from the law in Cornwall or elsewhere. We know how difficult it is to obtain uniform decisions even in the Superior Courts, and that many are given in conformity with precedents. But when the law comes to be administered in a large number of local courts, without appeal or controul, the decisions must be various, and there will be no mode of rendering them otherwise. There will not be reporters in those courts, and if there should be, who will read the reports of the multitude of cases in twenty, or perhaps fifty, additional courts?

"It appears to me that the only way to effect uniformity would be to give a right of appeal to the Superior Courts, and then the reports of such cases of appeal would go back to the country and the local judges, and insure that object—at least to a certain extent. But I think a much better plan would be to have an inferior jurisdiction within the jurisdiction of the Superior Courts, that is to say, inferior in amount.

"With regard to an inferior jurisdiction, I would observe, that much of the valuable time of the Superior Courts is taken up with business of a most frivolous nature, almost beneath the dignity of those courts; business that cannot, and does not, require the presence of four learned judges to decide; and which

would be much easier and better decided by one judge. I would, therefore suggest, if another judge should be added to each court, that one judge should always sit alone in a separate court to take matters under a given amount, with power to send any cases of moment, or difficulty, to the full court. This would, I am confident, greatly relieve the full courts, and give them time to get through the other more important business, and thereby avoid arrears.

"I am aware how extremely well the business is done in the metropolitan and neighbouring sheriff's courts, and no doubt elsewhere; but I do not think it would be any imputation upon the learned undersheriffs to say, that some cases go before them which it would be more satisfactory should go to the single judge. I allude to writs of inquiry, in cases of crim. con., seduction, and trespass in general, and which are comparatively so infrequent as to make it no object to undersheriffs to retain them.

"Appeals from the local courts (if such courts are to be established) might be heard before the single judge. If it be said that this would create expense and delay, the answer is, the party lodging the appeal should at the same time lodge a sufficient sum to cover his adversary's costs of the appeal, and then the appeal could not in any way operate as a denial of justice; for if the decision be wrong, it ought to be reversed; if manifestly right, there would be few appeals for delay at the peril of costs, particularly if such costs were first paid into Court.

"One great objection in my mind to the Courts as proposed is this, that no counsel or attorneys are to be allowed to practise there; or if they do, they are not to be entitled to be paid for it. The consequence of this will be, an utter denial of justice to numbers of persons, and will give a great advantage to the bold and unprincipled over their more respectable or more nervous neighbours. Suppose a female to have a disputed amount with an individual, nine times out of ten she will rather pay it, or forego a claim, than go personally into Court.

"In addition to the relief given to the Superior Courts by the additional judges, and division of labour, by having a separate court for the decision of business of the more trifling nature, much might be left to the principal officers of the several courts, and so much time and expense thereby saved as in my mind to render local courts wholly unnecessary.

"There is nothing more difficult than establishing new courts; it is found by experience much easier and better to render existing courts more effective.

"Courts of conscience have always been found to be perfect nuisances; and, so far from administering justice, occasion the most flagrant injustice. I do not mean this as a reproach to the judges therein—the fault lies in the nature and constitution of those Courts.

"I would here suggest, that in a commercial country like this, there must always be law and lawyers. That it is manifestly for the advan-

tage of the community that the lawyers should be respectable; and they cannot be respectable unless they are fairly paid. Take away their fair remuneration, and none but the lowest of the profession will condescend to follow it, at least the common law branch of it. And I do not hesitate to say, that if such a local court bill should be carried as has been proposed, it will occasion the utter ruin of a very large proportion of the profession.

"I admit that this is not of itself a sufficient argument, provided the public should thereby obtain a great benefit, but such benefit is by no means clear or certain. My opinion is, that although the law ought to be much cheaper than it is, it may be too cheap. Cheap law has not been found to answer in other countries; it is sure to increase litigation, and that to such an extent as to make it a grievance and a nuisance. On the other hand, I think it it is a mistake in the members of the profession to suppose that by rendering the law less expensive, their interests would suffer. I think on the contrary the reverse would be the case, for many and obvious reasons. I think much of the expense to which no profit to the profession attaches might be curtailed, whereby less capital would be required; and though in certain cases fees might be diminished, increase of income in the increase of suits might be expected, and would more than make up for any loss.

"I think I may state it is a fact that what will injure attorneys will in an equal degree injure the members of the bar. And in a country like this, where forensic talent has arrived at a degree of perfection unknown in other countries, and where the bar has been a school for the first orators of their day, I think it would be impolitic to pass any measure that would work such material injury.

"In what I have offered as remedies for known disorders, I feel that much benefit would be conferred on the community without injury to any human being.

"With regard to the expense of making three additional judges, I think it will appear small compared with the advantages to be derived therefrom; and as compared with the expense that must necessarily attend the foundation of local courts, with the necessary and numerous judges and officers thereof, it will be quite trifling."

4. In the last place, Mr. Dax thus writes on the *registry courts and trials of controverted elections*:

"I approach this subject (he states) with most apprehension, because I fear the feeling of the Premier, and a large majority of members, is adverse to the loss of any part of the privileges of the House of Commons; and that they firmly believe it is for the advantage of the community they should be retained entire; and it may appear presumptuous to offer any suggestion on such a subject; still I think I may venture to say that the decisions of the revising

barristers are unsatisfactory, more particularly from their not being uniform—for in the decisions of judges uniformity is most desirable. And I may also venture to say that the decisions of the committees upon the trial of controverted elections are also anything but satisfactory: and that the mode lately adopted by the house will not be much more so. The objections are also that those decisions are not uniform. That the trials are most enormously expensive, operating no doubt in many instances in prevention of parties submitting themselves at all to such tribunals; and they occasion a great waste of time, and the most harassing labour to the members of the committees themselves.

"Should three new judges be appointed, a court might be constituted consisting of three judges, one being taken (in rotation) from each of the Superior Courts; such court might be called "The Court of the House of Commons." To this Court there might be an appeal from the decisions of the revising barristers upon cases to be stated by them, and which might be decided at a very trifling expense. This would insure in future uniformity of decisions in such matters; for the judgments of the court would very soon form a sure guide to the barristers.

"And I would suggest that this would also be an excellent court for the trial of controverted elections; and the real power might still be retained by the House of Commons. Cases might be sent to the court for trial, and the judges might certify their judgments to the house. The house might retain the power of sending the same back for revision if necessary; or even reversing the decisions. The real power and privileges would then remain. Can it be doubted that such decisions would be more satisfactory than the decisions of the committees? And would there be any just cause of complaint or of alarm in a political or any other point of view?

"In the introductory part of this letter I stated that I should have to make out the necessity of and advantage to be expected from an additional judge to each court; I trust I have now shown both.

"Since I first began this letter, a material alteration has been made in the Northern Circuit, by having an additional judge there, and which materially strengthens what I have hitherto said as to the necessity of additional judges; as it shows that even now there are not judges enough for the circuits."

Since writing the above, it has been reported that the Lord Chancellor intends introducing a local court bill; and Mr. Dax suggests that much objection would be removed by allowing the proceedings in the county courts to be founded upon the writ of summons issuing from the Superior Courts, which would at once give jurisdiction to the latter over the new courts.

LORD DENMAN'S LAW OF EVIDENCE BILL.

LORD DENMAN has brought in a bill to remove objections to the admission of evidence on the ground of interest or of crime. It has been received with very general approbation in the House of Lords, and will probably pass in the course of the present Session. We therefore set it forth fully.

Altogether, when we consider that besides those already brought in, bills have been announced for altering the Law relating to the Registration of Voters, the Ecclesiastical Courts, the Law of Bankruptcy, and the Practice of the Court of Chancery, it may be considered that this is by far the most important year, so far as Law Reform is concerned, since the year 1834.

1. It recites that whereas the inquiry after truth in Courts of justice is often obstructed by incapacities created by the present law, and it is desirable that full information as to the facts in issue both in criminal and in civil cases should be laid before the persons who are appointed to decide upon them; and that such persons should exercise their judgment on the credit of the witnesses adduced, and on the truth of their testimony: Now therefore be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present Parliament assembled, and by the authority of the same, That no person offered as a witness shall hereafter be excluded by reason of incapacity from crime or interest from giving evidence, either in person or by deposition, according to the practice of the Court wherein his evidence shall be received, on the trial of any issue joined, or of any matter or question, or on any inquiry arising in any suit, action, or proceeding, civil or criminal, in any Court of this realm, or before any judge, jury, sheriff, coroner, magistrate, officer, or person having by law or by consent of parties authority to hear, receive, and examine evidence; but that every person so offered may and shall be admitted to give evidence on oath or solemn affirmation in those cases wherein affirmation is by law receivable, notwithstanding that such person may or shall have an interest in the matter in question, or in the event of the trial of any issue, matter, question, or injury, or of the suit, action, or proceeding in which he is offered as a witness, and notwithstanding that such person offered as a witness may have

been previously convicted of any crime or offence; provided that this act shall not render competent either the parties to any suit, action, or proceeding individually named as such in the record or proceeding in any Court of Law or Equity, or the lessor of the plaintiff, or the tenant in possession of the tenements sought to be recovered, or the guardians or next friends of infants, or the husband or wife of such persons respectively, where heretofore their evidence has been rejected on account of interest or of their relation to each other respectively; provided also, that this act shall not repeal any provision in a certain act passed in the Session of Parliament holden in the seventh year of the reign of his late Majesty, and in the first year of the reign of her present Majesty, intituled "An Act for the Amendment of the Laws with respect to Wills."

2. *Certain persons may make affirmation instead of swearing.*—And whereas many persons belonging to a certain denomination of Christians called Baptists conscientiously believe oaths to be forbidden by the word of God, and many of them have petitioned Parliament to be permitted to make affirmation instead of swearing; be it enacted, that any person offered as a witness or summoned as a jurymen may make affirmation instead of being sworn, in the form following:

"I solemnly declare, that I belong to the denomination of Christians called Baptists, and that I conscientiously believe oaths to be forbidden by the law of God; and I solemnly affirm, that the evidence, &c. or that I will well and truly try, &c. (as the case may be).

And that any person duly convicted of falsely stating when so offered as a witness that he belongs to such denomination shall be liable to be punished, as in cases of misdemeanors, by fine and imprisonment; and that any person who, having so affirmed, shall be convicted of wilfully giving any false evidence, shall and may suffer all or any of the penalties now by law attached to the commission of wilful and corrupt perjury; and any person who shall be convicted of suborning any person to give false evidence upon such affirmation shall and may undergo the penalties by law attached to subornation of perjury.

3. *In legal proceedings not necessary to state that jurors had made affirmation.*—And be it enacted, that wherever in any legal proceedings, whatever former legal proceedings may be set out, it shall not be necessary to specify that any particular persons who acted as jurors had made affirmation instead of oath, but it may be stated that they served as jurymen, in the same manner as if no act had passed for enabling persons to serve as jurymen without oath.

CHANCERY REFORM.

No. IV.

THE NEW LUNACY BILL AND ITS BEARING ON LOCAL COURTS.

FROM the circumstance of the Lord Chancellor having, during this week, brought the lunacy business of the Court of Chancery before the House of Lords, we are induced to travel out of the course we had proposed, and to offer a few observations to our readers on that subject. Notwithstanding the changes made nearly ten years ago in the practice in Chancery as to the forms of orders on petitions, and as to the long recitals of the petitions and other proceedings therein, the parallel practice in lunacy has been left just where it was. To this day, every order in lunacy is prefaced by a long statement of the allegation of the petition on which it is obtained; and this is still done, although ten years ago the Legislature declared that all such statements were quite useless, and only a needless expence. The practice, indeed, is kept up solely and *avowedly* to keep up the expence. The clerk of the custodies, who is the entering register in lunacy, is still dependent on fees; and from these recitals he derives by far the larger part of his income; and these recitals are kept up merely, that during his life, the income of this office may not be affected. Indeed it is difficult to imagine a more improper state than this part of the judicial establish is *confessedly* in; for by the stat. of 2 & 3 W. 4, c. 111, s. 1, the office of the clerk of the custodies is first abolished as useless and mischievous, and then by s. 2, it is continued for the life of the present very honorable and respected possessor.

Again, the first point to be ascertained in the administration of a lunatic's affairs, after the fact of lunacy is determined, is what property the lunatic is possessed of, and who is his heir-at-law, and who his next of kin. This enquiry is one which obviously can best be made on the spot where the lunatic and his friends reside, and at the time when these very parties are before the judicial functionaries, charged with ascertaining the fact of his mental incapacity. Accordingly, the original framers of the commission *de lunatico inquirendo* directed the commissioners not only to enquire into the fact as to the alleged lunacy, but whether the lunatic has alienated any lands or tenements, &c., what lands or tenements remain to him, and who is the nearer

heir, and of what age. But in practice it has of late years been the usage for the commissioners not to proceed in the latter part of the enquiry, but to return that no evidence has been laid before them to shew the facts there asked after.

Now, were the commissioner who executed the writ of enquiry also charged with ascertaining these facts, and ascertaining who would be the proper committees of the lunatic's person and estate, and whether any salary should be allowed the committee of the estate, and what allowance should be made for the lunatic's maintenance, and what also for his wife and children, if he have any; and if such commissioner were paid by a salary, and not by fees, it is quite obvious that he would perfect these enquiries, or at any rate lay a very extensive foundation whereon to perfect them, *at the time* when he was at the lunatic's residence, surrounded by the lunatic's acquaintance and family, and in the place where the facts must be ultimately investigated. This he would do, if only for his own ease and comfort, and that he might get through his year's work, and earn his year's salary with as little trouble and labour as he could. And besides so very sordid a motive, he would, if he had any care for justice, or even any desire, for his own credit's sake, to do his work as well as he could, at the time when he was on the spot, take the opportunity of asking the *disinterested* persons, who would be then around him, what parties they thought should, for the advantage of the lunatic and his estate, be appointed the committees. He would do this, knowing that if he left such work to be done in his own chambers in London, he would possibly leave the whole matter in the hands of parties who only desired the office for sinister purposes, and who would there present only such facts to him as they might think most likely to forward the objects they had in view. He would do it, too, on the spot, knowing that if he postponed the work for a chamber enquiry, it would be done with a loss of time and waste of money, which it was his duty, if possible, to prevent. The removal of lunatic references from the Masters is, in our view, a very valuable improvement. The constant deputation and wide scattering of duties, with its consequent loss of moral responsibility and personal interest and attention in the functionary, is in our view, one of the greatest defects of our equity institutions. On this subject, we some time since dealt largely in a series of articles on the Master's Office.

Again—while, according to the present practice in Chancery, a receiver in a suit is bound from time to time, at the mere bidding of the Master, without order, to come into the office and pass his accounts; and while it is thought right, he should be bound thus strictly, although all adverse interests in the property under his management, are represented in the suit, and all the parties representing these interests are there to watch him, and keep him in order; according to the practice in lunacy, in the parallel case of a committee, where there is probably no one caring to check his proceedings, or to press them on, not only has the Master no power to call on him to bring in his annual accounts, but he himself has no power to take them in without first presenting a special petition to the Lord Chancellor, for leave to do this very obvious duty, and obtaining, at a considerable expense, a formal order allowing him to do it.

Is it necessary, again, to deal with a lunatic's funds in the Accountant General's hands? The committee must first obtain an order from the Lord Chancellor in lunacy, and get it drawn up by the secretary of lunatics, and file it with the clerk of the custodies, and then take the copy to the Chancery side of the Court, and get another order from the Lord Chancellor as a Chancery Judge, based on his old order in lunacy, and then get this drawn up by the Chancery registrar, and then entered with the Master of the reports; and then only he has a document on which the Accountant General will act. All this must be gone through before he can invest a single dividend.

We have pointed at these obvious defects in the lunacy system to enable us to say that these are among the defects of which the Lord Chancellor's bill will enable the cure. This bill may also do, it is probable, much other good not here pointed at. It will impart a uniformity to the proceedings on the writ of enquiry; it will practically lead in the minor matters in lunacy to making the Lord Chancellor the appellate Judge, rather than the primary Judge, of subjects which are not often of a nature to require his personal attention; it will make the primary Judges (the commissioners) *into Judges taking their own references* (in our eyes, as our readers know, a most important principle in judicial procedure); and by the very reduced expenditure it will occasion, it will greatly increase the number of lunatics' estates under judicial administration, and at the same time,

and what is even more important, it will extend, through the admirable system of medical visitation, the salutary watchfulness of the judge in lunacy, to very many more of those unfortunate wrecks of humanity to whose benefit this branch of judicature is devoted. By its despoiling expenditure, the Court of Chancery, we fear, has heretofore far too often pauperised its lunatics. Practitioners can rarely have felt defects in our legal institutions more keenly, than when they have been called to deal with the case of a lunatic whose property was so placed as only to admit of *judicial administration* and yet was so small as to make such administration a sure grave for the entire estate.

In another point of view this bill is a subject of much interest to us. The theory of local courts would seem to have gained considerable ground of late, though why we cannot tell; for no new reasons have been adduced that we know of, in its favor. In our belief, it is a great popular blunder. The principle of division of labour is just as applicable to law, as to calico making; and we believe that it would be as wise to attempt to supersede Manchester, and to set up parochial cotton mills, or to put down steam worsted spinning, and to re-establish a spinning-wheel for every old woman throughout the country, as to attempt to set up king Alfred's county courts again, under whatever other name the legislature may please to call them. The country part of the profession has found that the litigatory department of its business is best and cheapest done in London, by an agent always attending to that particular department, and to that alone. And it has found that the legal article manufactured in London is of a better quality. Seeing that the chief part of equity business is amicable administration business, (a business in which the qualifications of the *master* only signify, not those of the *judge*) and knowing what a first-rate master the Chancery Court of Lancaster has, and that he will travel to any part of the county to execute his references, we ask why has the business of that court dwindled away to nothing? Merely and solely because the Liverpool or Manchester practitioner (and he yields in shrewdness to none) finds that the principle of division of labour is too strong for his local court; that it is better for him to send to his London Chancery agent, who is attending to this one class of business only and always, than to try to work such references himself, having, as he can have, only one or two of them per annum to do it

at most. Besides this, the rail roads and the penny-post have now settled the question if it was not settled before. If any general local court act should pass, leaving the Queen's courts concurrent jurisdiction (and it would be against the first principles of judicial legislation not to let plaintiffs work out their own relief the way they think they best can) we are quite confident it will make little or no change in the practical transaction of litigatory or administrative business. Now, just at the moment when local court bills are all the rage, the Lord Chancellor has brought in a bill of which the most valuable feature is essentially *anti-local*. It places all the country commissions of enquiry under two London commissioners. It extends the excellent principle of the lunatic visiting bill to the legal part of the business. If it be right to send, at a great expence, a first-rate physician from London once every year of the lunatic's life, to see him, it is surely right to incur, *once in his life*, the expence of sending a good London lawyer to see whether he is lunatic or not. But if local judges are right to do the local legal work, why, we would ask, should not local physicians do the local visiting work also? *Because noble and learned lords, who can declaim loudly in favor of local barristers, have found by experience, that it does not do to trust the local doctor of medicine, with his limited and inferior experience. They have found, with reference to the medical assistance the law requires, that rectitude of mind, rectitude of judgment, and rectitude of action, are best secured by the "neighbouring eyes" of a vast metropolitan public.*

CONSTRUCTION OF THE WILLS ACT.

THE Wills Act, 1 Vict. c. 26, has now had a fair trial, and considering the large body of law which it affected, and the constant occurrence of the subject to which it relates, we know of no act that has created so little litigation, or is more deserving of praise for the general benefit conferred by it. The new attestation clause, the rendering two witnesses in every case necessary, although certainly a somewhat severe part of the measure, has been found to be attended with the good results anticipated from it, and a clear and settled rule having been once laid down, it will become familiar to men's minds, and be almost always acted on. There is, however, an exemption from the operation of the act, under the 11th section, in the case of the wills of soldiers

"in actual military service," and there has been some question as to the construction to be given to this expression.

In one case, a lieutenant in the 76th regiment of foot, stationed at Demerara, died a bachelor, leaving a father. After his death, a testamentary writing, in the form of a letter to his solicitor, written by the deceased while on military service at Berbice, was found among his papers, but unattested. Sir Herbert Jenner said, "I understand that there have been two cases in which probate has passed in common form upon affidavit that the deceased was a soldier in actual military service. I am not prepared to say that our regiments in the colonies, or in garrison at home, are in actual military service. I cannot think it was the intention of the legislature to except every officer under such circumstances from the operation of the act. Under the peculiar circumstances of the case, considering that the party deceased was with his regiment, and, in the opinion of the War Office, in actual military service at the time, I shall allow probate of this letter to pass. It is under the peculiar circumstances of this case that I do so, nor should I do it, but that the father, who prays probate, is the person who would be entitled to the whole property if his son is dead intestate, and there is no person against whom the paper could be propounded."*

Another question on this section has been whether the term "soldier" extended to persons in the military service of the East India Company, and on this point Sir Herbert Jenner has expressed himself more decidedly in a late case in which the point arose.^b "The deceased," he said, "must be considered to have been a surgeon in the East India Company's service; his being in charge of recruits for royal regiments, which was no part of his regimental duty, would not constitute him a Queen's officer. But with respect to mariners, the exemption is extended to merchant-seamen, and by parity of reasoning, persons in the military service of the East India Company would seem to be included in the term 'soldier.' There is nothing in the section which restricts the exception to the Queen's service. I am of opinion that a soldier in the East India Company's service comes within the exception; and I am inclined to hold that, under the circumstances, the deceased, in this case, was in the actual military service at the time the will was written."

Another point on the same act has re-

* *In re Phipps*, 2 Curteis, 368.

^b *In re Donaldson*, 2 Curt. 386.

cently occurred. By the 20th section, it is provided that the whole will may be revoked by burning, tearing, or otherwise destroying the papers; and a question has arisen whether a "cancellation" came within the words "otherwise destroying." It has been held under the act, that if a party cut out his name with a pair of scissors, it is a destruction within the meaning of the act.^c In deciding the point the same learned Judge said, "It is admitted that prior to the 1st of January, 1838, this would have been a good revocation, for under the old law cancellation, *animo revocandi*, was a mode of revoking a will. The act 1 & 2 Vict. c. 26, however, has made a very considerable alteration in the testamentary law; by this statute a distinction existing under the former law is removed; wills both of personalty and of land are required to be executed and revoked in the same manner; the Court has, therefore, no discretion, but must govern itself by what it considers to be the true meaning and construction of the act." "The question comes to this: Is a will destroyed within the meaning of the 20th section, by being struck through with a pen, the name of the testator being crossed out, and the names of the attesting witnesses being struck through? It appears to me quite impossible to put such a construction upon the act, as to say that cancelling a will, by striking it through with a pen, is a destruction of the will. When the legislature, after mentioning 'burning' a will and 'tearing' a will, speak of 'otherwise destroying' a will, they must be understood as intending some mode of destruction, *eiusdem generis*, not an act which is not a destroying in the primary meaning of the word." The will was accordingly admitted to probate.^d It will be seen that this is an important decision, as we have been accustomed heretofore to think that the cancellation of a will would revoke it.

ANSWERS TO EXAMINATION QUESTIONS.

[We have received the following answers to the questions in conveyancing which were put last term.]

Estates.

A devise of real estate without any words of limitation, contained in a will, made previously to the 1st January, 1838, gives to the devisee an estate for life only. It should be observed, however, that if in the wording of

such a devise, the testator express the slightest intention of giving more than an estate for life to the devisee, the Courts of Equity will carry such intention into execution. By 1 Vict. c. 26, s. 28, which applies to wills made on or subsequently to 1st January, 1838, it is enacted "that where any real estate shall be devised to any person without any words of limitation, such devise shall be construed to pass the fee simple or other the whole estate or interest which testator had power to dispose of by will in such real estate, unless a contrary intention shall appear by the will."

It is a vested remainder. The persons to whom the remainder is limited, and the event upon which it is to take effect, are certain and determined. The mere uncertainty whether the estate will ever come into possession, will not make the remainder contingent. *Fearne*, by *Butler*, 216, 9th edition. If the remainder were contingent, the tenant for life by forfeiture, surrender, or otherwise, might destroy the remainders limited on the settlement. *Burton*, sec. 778.

Cross remainders are where particular estates in land are given to two or more persons with a direction that upon the determination of either of such particular estates it shall remain over to the other grantees, and the remainder-man or reversioner is not let in till the determination of all the particular estates. *Cruise*, Vol. 1, 298. Cross remainders cannot be implied in a deed. *Cole v. Livingston*, 1 Vent. 224. They may, however, be implied in a will. *Preston on Estates*, 1 Vol. 94.

An underlease will not be affected by the surrender of the original lease. *Watkin's Conveyancing*, 10. The rent reserved by the underlease will pass to the surrenderee as incident to the reversion. It would be manifestly unjust that the lessee should be permitted to frustrate his own grant.

Merger.

To produce merger a greater and a less estate must become vested in one and the same person in one and the same right, without any intervening estate. Fee tail is prevented by the statute *de donis* from merging in the reversion.

Yes, a term of years will merge in the immediate reversion, although it be for a less number of years than the term in possession. *Burton*, sec. 899; *Stephens v. Bridges*, *Mad. & Geld*. 66.

Conveyance.

Where the reversion is conveyed by deed of grant, the grantee may at some future period be called upon to prove the existence of a particular estate at the time of the grant, but this is not the case if the conveyance be by lease and release. *Burton*. sec. 149.

Curtsey.

No, it is not. If the husband have issue by his wife, born alive, and by possibility capable of inheriting her estate, it will entitle him after her death to hold the lands for life of which she was seised for an estate of inheritance

^c *Hobbs v. Knight*, 1 Curt. 768.

^d *Stephens v. Threll*, 2 Curt. 463.

during coverture, as tenant by curtesy. Burton, sec. 349.

Executor.

An executor *de son tort*, is he who takes upon himself the executorship by intrusion. The only difference between an executor *de son tort* and a rightful executor is, that the former cannot retain his own debt, for the law will not allow him to benefit by his own wrongful interference. Chitty's General Practice, Vol. 1, 526. A discharge given by an executor *de son tort* would be valid.

Distribution.

There is no difference whatever.

Trust.

A purchaser for valuable consideration without notice of the existence of the trust, will hold the land discharged from the trust. But if the purchase be made with a knowledge of the trust, he will hold the land subject to the trust.

Every trustee who has accepted the trust must join in the receipt for the purchase money, although he may have released the estate to the other trustees. A trustee cannot delegate a personal trust and confidence reposed in him. Sugden V. & P. 3 Vol. 174, 10th edition.

A trustee would not be justified in complying with the request of *cestui que trust*, unless *cestui que trust* were solely interested in the trust funds. Although *cestui que trust* would be estopped by his concurrence from proceeding against the trustee for the breach of trust, yet the trustee would be answerable to the remainder-men. *Cestui que trust* possesses no *jus disponendo* over the trust funds, where others are interested in them as well as himself.

Assets.

The statute enacts that they shall be equitable assets; and that creditors by specialty in which the heirs are bound, shall be paid before any creditor by simple contract, or by specialty, in which the heirs are not bound.

Mortgage.

He will not, unless the deed for securing the first mortgage be expressly given for securing the sum then lent, and also further advances. Coote, 512. If a first mortgagee lends a further sum of money without notice of a second mortgage, although the second mortgage shall be registered, his whole money shall be paid in the first place. Sugd. V. & P. 3 Vol. 370, 10th edit.

SELECTIONS FROM CORRESPONDENCE.

LEGAL EXAMINATION DISTINCTIONS.

Sir,

The subject of honors or distinctions being introduced at the examination of articulated clerks has, from time to time, been much discussed in your journal, and being an inter-

ested party, and rather differing in my opinion from several letters that have lately been addressed to you, I hope you will consider a few lines from me not unworthy of a place in your columns.

In the first place, I would state that I personally am not averse to the candidates being classed, or to any other mode of distinguishing those who pass through the ordeal with the greatest credit; but my notion is, that any such regulation, instead of working beneficially, would have just the contrary effect; I think it would lead to a regular system of "cramming up" for the examinations, and that this *crammed knowledge* being wholly superficial, would soon vanish from the mind, and as a consequence, it would very often follow, that those who passed with a high hand, and were held forth to the world as the cleverest and ablest lawyers, would, in fact, have no *solid legal knowledge*, and perhaps in a very short space of time would find themselves practically deficient: whilst those who have pursued a steady course of reading during the five years of their articles, and at the same time have not neglected the *practical parts of the profession*, because they have not passed the examination so brilliantly as those who adopted the cramming system, would be held forth to the world as comparatively inferior, though in fact they have the clearest practical knowledge, based on the soundest theoretical foundation.

R. W. S.

MEANS FOR TRACING PEDIGREES.

Sir,

Observing that on letters of probate there is a marginal minute as well of the sum under which the personality is sworn, as of the day of the testator's death, I recommend, as a great assistance in tracing pedigrees, that the minute be so extended or altered as to show where the testator had been, or was likely to be, *buried*.

And being on the subject of pedigrees, I would recommend a chain of references, thus—

That the entry of a *baptism* of a legitimate child should name the place where the parents were *married*. That the entry of a marriage should name the places where each of the parties, if single, was baptized—if both, or either of them, had been previously married, then substitute the name of the place of the *previous marriage*, instead of the birth of that party; and that the entry of the *burial* should show where the party, if married, was last married, and if single, where such party was baptized.

These particulars not to be certified by the registrar as facts, but as statements made by the persons attending the ceremony.

H. H.

AUCTIONEER'S AUTHORITY TO CONTRACT.

Sir,

In answer to the question No. 15 at p. 54, *ante*, it is stated at p. 85 *ante*, that, "In cases

of the sale of *lands*, the auctioneer is not to be considered as the agent for both parties, and therefore his entering the name of the buyer of a lot of land in his book as the purchaser is not a note in writing within the Statute of Frauds: *Stansfield v. Johnson*, 1 Esp. 101, but see *White v. Proctor*, 4 Taunt. 209," from which it appears that the auctioneer is not the agent of the *purchaser*. Previously to reading this answer I had come to the conclusion that the auctioneer was the agent of the purchaser as well as of the vendor, and on referring to Atkinson's Essay on Marketable Titles, p. 61, I read as follows—"It has long been settled, and indeed it is obvious, from the very nature of the relationship between the parties, that the auctioneer must be the agent of the *vendor*, for the purpose of signing an agreement; but it was long a subject of considerable doubt whether he could be considered as the agent of the *purchaser*, so as to bind him also by his signature. This point was finally set at rest in the affirmative by *Kemys v. Procter*, 3 Ves. & Bea. 57; (S. C. affirmed on appeal 1 Jac. & Walk. 350.) which underwent very great consideration—a very strong case—the purchaser not being present at the sale, and bidding by an agent, who, after the sale, refused to pay the deposit or sign the agreement; notwithstanding which *Sir W. Grant* decreed specific performance on the auctioneer's memorandum, or entry in the sale book of the defendant's agent being the highest bidder."

This statement of Mr. Atkinson's seems quite contrary to the answer above set forth, A. S.

[The decision in *Stansfield v. Johnson* appears to be correctly stated, but the case of *White v. Procter* is also referred to.—ED.]

QUALIFICATIONS OF ARTICLED CLERKS.

Sir,

At a time when such a laudable spirit of emulation is exhibited amongst the articulated clerks relative to Examination Distinctions, can it be improper to direct the attention of the profession, to another subject of almost equal importance with that of eminence in legal attainments?

It would be impracticable (for some years) to institute a classical and scientific examination, in addition to the present legal one; nor indeed should I wish to see such a measure attempted, unless it were accompanied by some facilities of obtaining academical education, greater than the country at present possesses: but those of our aspiring friends who have the good fortune to be resident in London, may (if I mistake not) avail themselves of the opportunities afforded by its university. I need not attempt to shew how much the credit of the lower branch of the profession would be enhanced, if its members were thus accredited citizens of the republic of letters, as well as loyal officers of her Majesty's Courts, and learned proficient in their country's jurisprudence. My experience as a clerk has forced

upon me no very exalted idea of the literary (and sometimes of the legal) attainments of those amongst whom I am designed to associate, as "one, &c."

These considerations have induced me to address myself to you, in the hope that I, and others *in consimili casu*, may ere long discover in the pages of the Legal Observer a faithful Mentor, pointing our youthful and honourable ambition to some insignificant niche in the temple of Fame through the portals of the London University; or perchance, we might be tempted to pant for gown and wig.

In short, Mr. Editor, I trust that you or some of your readers will favour us with some information respecting the regulations of the London University; which will serve as a suitable accompaniment to the Examination Papers, with which you have so kindly favoured the profession.

OBSERVER.

CHANCERY CAUSES.—MASTER'S OFFICES.

Sir,

I am delighted to learn that every cause remaining for hearing in the Court of Chancery will be shortly heard. This is well, and must gladden the hearts of many a suitor, and of not a few professional men.

I confess, however, I entertain no inconsiderable apprehension that if we are putting too much force on one portion of the machine, that by-and-by, the Master's offices will be overwhelmed with business, and be unable to keep the machine going in a way that could be wished. The obvious remedy is an increase in the number of Masters, which, I apprehend will be found indispensable. I believe the present number very little exceeds the number fifty, or an hundred years ago, when the Court had not a title of the business, and I do not consider the present mode of paying the chief clerks and the subordinates by a fixed stipend instead of fees, one at all calculated to facilitate the business of the suitors, but quite the contrary. I hope and trust the matter of the increase of Masters will receive that attention in the proper quarter its importance demands.

CIVIS A.

[We think the increase of the number of Master's clerks should be first tried.—ED.]

MOOT POINTS.

CONSIDERATION OF CONVEYANCE.

Upon A.'s bringing an action of ejectment against B., for breach of covenant to repair, it is agreed, *verbally*, that the defendant shall let judgment go by default, and be immediately afterwards reinstated by a fresh conveyance, on payment of costs up to a certain day, and the costs of the conveyance; no other or fresh consideration to be given than the previous low ground rents, as before. Judgment hav-

ing been signed, a doubt has arisen whether a sufficient consideration appears, to compel the reconveyance, and after executing to support the same. I do not see the point anywhere decided, and should be thankful for some early information.

OMICRON.

PROTECTOR OF SETTLEMENT.—FELONY.

There are few if any enactments, that are likely to produce more solid advantages to the community than the Fines and Recoveries Act, 3 & 4 W. 4, c. 74. It would, however, be somewhat surprising, considering the greatness of the change that has been effected, if it should not be found to require some amendments. The 33rd section relating to the appointment of protector in cases of treason or felony, on a superficial view, might be supposed to vest the protectorship, under those circumstances, in the Court of Chancery. Though that is evidently the intention of the legislature, yet I think, on a careful perusal, it will be found that no provision whatever is made for treason or felony; and, that to have embraced those cases the words which I insert in the clause in italics, or some other to the like effect, should have been embodied. After providing for the protectorship in cases of lunacy, the section proceeds as follows: "or if any person, protector of a settlement, shall be convicted of treason or felony, or if any person, not being the owner of a prior estate under a settlement, shall be protector of such settlement, and shall be an infant, or if it shall be uncertain whether such last mentioned person be living or dead, then his Majesty's High Court of Chancery shall be the protector of such settlement, in lieu of the person *'who shall be so convicted of treason or felony, or'* who shall be an infant, or whose existence cannot be *'ascertained as aforesaid.'*"

There is evidently no *express* provision under this section that the Court of Chancery shall have the protectorship in cases of treason or felony; and although I have consulted several text writers on the subject, I do not find any doubts raised as to the construction of the above clause.

Q. U. S.

COMPOUND INTEREST.

A person, of the age of 70, holds a policy of assurance of a respectable office on his own life, which, being of several years standing, is of considerable value. Having fallen into decayed circumstances, he is unable to keep up the annual premiums by his own means, but at the same time is anxious to preserve the policy for the benefit of some of his family who may survive him. A friend of his is willing to make the payments for him upon the security of the policy, on the condition of receiving the same with *compound* interest upon the falling in of the policy on the death of the party. By what mode can such compound interest be secured, so as to be a legal charge on the policy?

Q.

EQUITABLE MORTGAGE.—NOTICE.

A. is indebted to B. in 200*l.*, for the security whereof B. holds A.'s promissory note, and also the title deeds of certain lands, with a memorandum of deposit, constituting an equitable mortgage. A. wishes to pay off B. immediately and take up his securities. B. insists on six months' notice, or interest in lieu thereof, as if it were a legal mortgage. *Quære*, whether he is entitled to this?

Q.

THE CITY PLEADERSHIP.

We presume that it is owing to the overstocked state of the bar, that so hot a contest is going on for the city pleadersbip. It appears that two of the candidates have circulated a long string of testimonials from most of the leaders of the common law bar. Committees are organized, over which certain eminent citizens preside, and canvassings are made with as much zeal as if the object were a seat in the commons house of parliament. True it is, that the pleadersbip forms a step to the more dignified and lucrative office of common serjeant, and thence of the recordership, lately graced by the Lord Denman.

Still we are reminded, that some of the measures which have been taken are new in the proceedings of the bar; and we think it our duty to record the doubt which has been expressed of the propriety of procuring and sending certificates of diligence and good conduct from the pastors and masters under whom the candidates have served. This notion, however, may be an erroneous one, and it may be quite right that the citizens of London should be informed of the pretensions of each gentleman who seeks their suffrage. We fancy, however, that they are all honourable men, of equal merit, and about the same standing. The worthy electors, we apprehend, will be guided, not by these testimonials, but by their own knowledge of the candidates, or the opinions (not of counsel) but their fellow-citizens.

If, however, the mode of preparing for the contest be an exceptionable one, we believe the candidates are not responsible for it. They have (as in more important contests) placed themselves in the hands of their friends—a very convenient arrangement,—and interfere not in the conduct of the business.

SUPERIOR COURTS.

Lord Chancellor.

ORDERS OF AUGUST, 1841.—COPIES OF BILLS.

The copy of a bill served on a defendant under the 2nd order of August, need not be an office copy.

The Lord Chancellor having conferred with the other judges on the construction of the 23d order of 26th August 1841, stated, that a copy of a bill omitting the interrogating part was sufficient to serve under that order, and that an office copy was unnecessary. The affidavit would state the correctness of the copy. March, 1842.

WILL. — POWER OF APPOINTMENT. — CONSTRUCTION.

Bequest of stock to trustees to pay dividends to husband and wife, and the survivor of them for life, and after death of survivor to pay the capital to their children in such shares as the survivor of husband and wife should appoint by his or her last will: Held, that the power could only be exercised in favour of such of the children as should be living at the death of the survivor.

William Linton, by his will, dated in 1814, bequeathed to three trustees therein named, (whom he also appointed his executors), the sum of 1700*l.* 4 per cent. Bank Annuities, in trust to pay the interest and dividends thereof to Joseph Christie and Sarah his wife, during their lives and the life of the survivor, and after their decease, then in trust to transfer, or pay over the said stock to their children, in such shares and proportions as the survivor of them the said Joseph and Sarah should by his or her last will direct or appoint. The testator died in 1817. At the time of his death there were three children (out of five) of Joseph and Sarah Christie, then living. One of the three died in 1818; one married the plaintiff, and died in 1832; the other married the defendant. Joseph Christie having survived his wife by his will, dated in 1833, appointed the said sum of 1700*l.* stock, in favour of defendant's wife, the only child then living. Joseph Christie died in 1839. The plaintiff took out letters of administration to his wife, and filed the bill against the trustees and executors of Linton's will, and against Renneck, the appointees' husband, and his assignees, he having been declared a bankrupt, praying for a declaration that he was entitled in right of his deceased wife, as her personal representative, to one moiety of the 1700*l.*, and of all the dividends that accrued thereon since the death of Joseph Christie. The cause came to be heard before the Master of the Rolls, who held that the power of appointment was properly exercised in favour of the defendant's wife, and dismissed the bill with costs.^a

^a 22 Leg. Obs. 462.

Mr. Girdlestone and Mr. Roupell, in support of plaintiff's appeal from that decision.

Mr. Turner and Mr. Busk for Renneck's assignees, in support of the decision.

Mr. Richards and Mr. Dixon for Renneck.

Mr. Parry and Mr. J. H. Taylor, for the trustees of Linton's will.

Mr. Girdlestone, in reply, contended that the donee of the power could not, in the events that happened, exclude any of the children who survived the testator; that the gift was a direct gift to them, and therefore went to their personal representatives. Christie and his wife could not select any of their children, though they might determine the share of each. He relied on the following cases, *Mudoe v. Jackson*,^b *Hockley v. Mawbey*,^c *Vanderzee v. Acton*,^d *Custerton v. Sutherland*,^e *Campbell v. Sandys*,^f *Brown v. Pocock*,^g *Hamersley v. Bryne*.^h

The Lord Chancellor, having taken time to consider the question, said, after stating the words of the bequest and power, "It has been contended that Joseph Christie had no authority under Linton's will to make such an appointment. That depends on the construction and meaning of the clause whereby the testator directed his trustees after the decease of the survivor of Joseph Christie and Sarah his wife, to transfer or pay over the said stock unto their children, in such shares and proportions as the survivor of them should by his or her last will direct or appoint." When the testator directed that after the death of the survivor the transfer should be made to their children in such shares as the survivor should appoint, he must, I think, be taken to have meant children, among whom the shares were capable of being appointed by the donee of the power; but as the power was to be executed by will, those children could only be such as were living at his death, that is, at the death of the survivor of Joseph Christie and Sarah his wife. In this case one child only survived, but that creates no difficulty, for it is clear that the power in such case might be executed in favour of a single surviving child. It was contended on the part of the plaintiff that there was a vested interest in all the children living at the death of the testator William Linton, for it was said that the words of the bequest were, in substance, the same as those which were made use of in the bequest to Joseph Christie and Sarah his wife, who, it was admitted, took a vested life interest under the wife. Now to support this argument a part only of the words are taken, omitting the subsequent portion of the clause, upon the true construction of the whole of which the question must depend. The case gave rise to much discussion at the bar, and many authorities were cited on both sides, but the question at

^b 2 Bro. C. C. 588.

^c 1 Ves. jun. 150.

^d 4 Ves. 771.

^e 9 Ves. 445.

^f 1 Scho. & Lef. 281.

^g 6 Sim. 257.

^h 2 Clark & Fin.

last resolves itself into very narrow limits. I think the interpretation I have put on the clause is the true interpretation; that it is consistent with the principles to be extracted from the cases that were referred to; and I am of opinion, therefore, that the judgment of the Master of the Rolls must be affirmed.

Woodcock v. Renneck, at Westminster, November 1841, and January 31st, 1842.

Rolls.

PRACTICE.—PLEA FOR WANT OF PARTIES.

Where a fact is not necessarily within the knowledge of a defendant, and he is capable of availing himself of it by plea, he is not required to make a positive averment of such fact, but may state that he is informed and believes it to be so.

The plaintiff in this case filed his bill for an account, and the payment over to him of certain monies alleged to be in the hands of the defendants. He had been twice a bankrupt, and under the last commission had not paid 15s. in the pound, nor had he obtained his certificate.

The defendants put in a plea in which they stated they *had been informed and believed* that before the month of June, 1821, the plaintiff carried on the business of a linen draper, and was a trader within the meaning of the bankrupt laws; that he was indebted to various persons in the plea named in large sums of money, and to William and Edward Castleman in the sum of 100*l.* and upwards; that before the day therein named he committed an act of bankruptcy, and that a commission was duly issued against him on the 7th of June, 1821, under which he was duly found and declared a bankrupt, and certain persons in the plea named were chosen assignees, to whom the usual assignment was made; and that he shortly afterwards obtained his certificate, which was duly confirmed. The plea then further stated that the defendants had been *informed and believed* that the plaintiff did afterwards again carry on business, and was a trader, and was indebted, &c. (repeating the above averments), and that he was again duly found and declared a bankrupt, and an assignee was chosen of his estate; and that the said last mentioned commission had never been superseded, but that the same was then remaining in full force, and that the plaintiff never obtained his certificate under such last mentioned commission, and that either no dividend had been divided amongst his creditors, or that such dividend or dividends, if any, had not amounted to 15s. in the pound on the several debts proved under such last mentioned commission. The defendants then insisted that the assignee under such last-mentioned commission was a necessary party to the bill, and concluded by a general averment that all the matters and things they had so pleaded were true.

On the argument of the plea, which took place several days ago, it was contended on

the part of the plaintiff that it was not sufficient for the defendants to allege the matters therein contained simply on their information and belief, but that the averments should be positive.

The *Master of the Rolls* having taken time to consider, this morning delivered judgment. His Lordship said it had been laid down by Lord *Redesdale* in his Treatise on Pleading, p. 297, that the averments in pleas ought in general to be positive, but that in some cases a defendant was permitted to aver according to the best of his knowledge and belief, as that an account was just and true, and he referred to a case in 3 Atk.^a but he added, "Unless, however, the averment is positive, the matter in issue appears to be not the fact itself, but the defendant's belief of it." In *Drew v. Dreie*,^b Sir Thomas Plumer said that where a person is speaking upon his oath to acts not his own, but done by others, it is sufficient if he states them upon his belief, and that a more positive averment is not necessary. These being all the authorities cited, it can scarcely be said that it should be required of the defendants in this case to make positive averments of facts not within their knowledge. The affirmative of a fact is on the defendant, and it must be clearly and distinctly stated, but when a defendant states in his plea or answer his belief that a fact is true, he sufficiently renders himself liable to the penalties of perjury, and must be considered to have put the allegations sufficiently in issue. The plea must therefore be allowed, but without costs, and the plaintiff must have liberty to amend his bill by adding parties.

Pemberton and Chandless for the plaintiff.

G. Turner and Tayler for the defendants.

Kirkman v. Andrews, Feb. 23d, 1842.

Vice Chancellor Bruce.

CONSTRUCTION OF BEQUEST.—CHARITY.

A bequest to the poor of a particular parish, is not satisfied by payment of the money to the trustee of a dispensary, instituted for the medical relief of the poor of that parish and others "adjoining," but will be directed to be applied for the benefit of the deserving poor of the parish named by the testatrix, not receiving parochial assistance.

An information was filed by the Attorney General, at the relation of the vicar and churchwardens of Ormskirk for the purpose of having a sum of 200*l.*, which had been bequeathed by the will of a Mrs. Katherine Brandreth, secured for the poor of that parish. By her will she gave 200*l.* to the poor of the parish of Ormskirk, to be settled by her executors, so that the interest might be paid to them yearly. She appointed two executors, one of whom proved the will, and was the acting executor. It appeared, that he paid the 200*l.* to the trustees of a dispensary which had been instituted for the medical relief of the poor of Ormskirk, and "the

^a *Anon.* 3 Atk. 70.

^b 1 Ves. & B. 162.

adjoining parishes." By the trust deed of the dispensary, it appeared that the trustees for its management had large power over the funds, and might, if they thought fit, pull down the existing dispensary, and erect another of greater dimensions at their discretion. The question was, whether this application of the 200*l.* was consistent with the trust in the will.

Mr. Follett appeared for the relators.

Mr. Simpkinson appeared for the executor, who had paid the legacy duty.

Bruce, V. C.—"I think this application of the money is by no means consistent with the words of the will; I must, therefore, decree for the relators. The costs must be paid out of the estate of the testatrix. I will not send this to the Master's office, but I will direct that the money shall be paid into Court, the interest to be annually applied for the benefit of the deserving poor of Ormskirk, who do not receive parish relief."

Attorney General v. Brandreth, H. T. 1842.

Vice Chancellor Wigram.

CONSTRUCTION OF THE 24TH ORDER.—AFFIDAVIT OF SERVICE.—PRACTICE.

The affidavit of service under the 24th order, must specify that the copy of the bill did not contain the interrogating part, and an examined copy will be sufficient, even though the bill may not have been filed at the time the copy was made.

Vice Chancellor Wigram mentioned that in a case before the Court on a previous day, he had decided that the affidavit ought to specify that the copy of the bill served did not contain the interrogating part. He said, he had the Lord Chancellor's authority for so deciding, although he had intimated a doubtful opinion upon it. His lordship, however, had now made an order, that on hearing a motion made pursuant to the 24th order, the Court must be satisfied that a copy of the bill, omitting the interrogating part, had been served on the party. An examined copy would be sufficient, although the bill might not have been filed at the time the copy had been made. As to the order he made the other day, he had doubted whether the examined copy made before the bill was filed would be good.

Gibson v. Haines, March 2, 1842.

Queen's Bench.

[Before the four Judges.]

STRIKING OUT PLEAS.

Where pleas have been pleaded under an order of a judge, no rule for striking them out can be discussed; but the plaintiff must in the first instance move to set aside the order.

Mr. Richards shewed cause against a rule for striking out three pleas pleaded by the defendant to this action. This rule must be discharged. The pleas were pleaded under an

order of Mr. Justice Crotledge. The application here ought to have been to set aside the order.

The Court called on

Mr. Porteus to support his rule.—The pleas here are unquestionably bad.

Per Cur.—The pleas cannot be discussed now. If this rule should be made absolute, there would then be an order to plead the pleas, and a rule to strike them out, and both in full force at the same time. This cannot be allowed. The rule must be discharged, but not with costs, as it was not moved with costs.

Rule discharged.—*Coleaighi v. Warne*, H. T. 1842. Q. B. F. J.

RIGHT TO PEW.

In an action on the case for disturbance of a pew, claimed in right of occupation of a house, the defendant pleaded, first, not guilty; secondly, that the plaintiff had not a right to the use of the pew, as appurtenant to the house in question. The defendant afterwards sought to add a plea, that the plaintiff was not possessed of the house in question, but the Court refused him leave to plead this additional plea.

Case for disturbance of a pew at church, the use of which the plaintiff claimed in respect of holding a certain house in the parish where the church was situated. The pleas were, first, not guilty; secondly, that the plaintiff had not a right to the use of the pew as appurtenant to the house in question. An application had been made to Mr. Justice Wigram, at chambers, for leave to plead a further plea, to the effect that the plaintiff was not possessed of the house in question; but the learned judge refused the application on the ground that all the matter which was required to be put in issue in the cause, and the only questions that could be determined by a verdict on the present state of the declaration, were raised by the pleas already on the record.

Mr. Wordsworth now moved for a rule to shew cause why this additional plea should not be allowed to be pleaded. The principle laid down in *Murray v. Boucher*,^a must govern the present case. Unless the defendant is allowed to put this plea on the record, he may be defeated on account of the form of the pleadings. It may be perfectly true that the plaintiff, if in occupation of the house, may be entitled to the use of the pew, but it may also be true, that at the time of the cause of action arising, the plaintiff was not in possession of the house in respect of which the right to the use of the pew was claimed. Now this is a right that depends on occupation—it is not a personal right, enjoyed by any particular individual. [Mr. Justice Patteson.—The count in *Murray v. Boucher* was struck out, because it raised an immaterial issue.] And here the plea required to be inserted would tender a material issue—the second plea now on the record, is an immaterial plea, on the point just referred to,

and yet on that point alone, the defendant may be defeated. *Murray v. Boucher* is therefore an authority in favour of this application.

Per Curiam.—The plea now on the record cannot be said to be immaterial, when a decision of it in favour of the defendant would put an end to the action.

Rule refused.—*Pepper v. Barnard*, H. T. 1842. Q. B. F. J.

Queen's Bench Practice Court.

VENIRE FACIAS.—JURY PROCESS.—RETURN DAY.—DAY CERTAIN.—FORTHWITH.

The venire facias juratores, may, since the passing of the 3 & 4 W. 4, c. 67, s. 2, be made returnable "forthwith," or on a day certain.

This was an application to arrest the judgment, on the ground that the *venire facias juratores* had been made returnable "forthwith," instead of on a day certain. The cause had been tried in Michaelmas Term, and a verdict found in favour of the plaintiff. The rule *nisi* to arrest the judgment having been obtained,

S. Hughes shewed cause, and contended that the *venire* had been made properly returnable, by being made returnable "forthwith." This power of return was in strict conformity with the provisions of the 3 & 4 W. 4, c. 67, s. 2, which allowed the *venire facias juratores* to "be made returnable forthwith." The form introduced by the books of practice, were in accordance with this provision. The only meaning of the word "forthwith," was "without delay," or "immediately." Had the *venire* been made returnable on a day certain, it would not be in conformity with the act, supposing the words of it to be imperative: there was consequently no ground for arresting the judgment.

Pigott supported the rule, and contended that the object of the statute was merely to prevent unnecessary delay by substituting vacation for term, when it was wished by the parties so to do for the sake of expediting the cause. It was never intended to abolish the previously existing practice of giving a reasonable number of days between the teste and return. The defendant had a right to examine the panel before the trial at *nisi prius*, but of that right he would be deprived if the *venire* could be thus made returnable. Seven days, at least, ought to be given.

Cur. adv. vult.

Wightman, J., thought that the words of the act having been pursued, enough had been done by the plaintiff. If the word "forthwith," meant seven days, it must of course receive that construction. If those days were omitted, and a day certain named, the inconvenience suggested by the defendant would equally arise. The words of the act being followed, enough, I think, has been done, al-

though making the *venire* returnable on a day certain might be sufficient.

Rule discharged.—*Druke v. Gough*, H. T. 1842. Q. B. P. C.

STAMP.—LEASE.—AGREEMENT.—VALUE OF 20l.

The matter of an agreement to let premises for a certain period, at a specific sum of 10l., cannot be considered as of the value of 20l., and therefore does not require a stamp.

This was a trial before the sheriff, of an action to recover a sum of 10l., which was due by the defendant to the plaintiff, for the use of certain premises let by the latter to the former. In support of the plaintiff's case, an instrument in these terms was put in: "I, John Thompson, do hereby agree with William Marlow, to re-take of him two acres of land, being more or less, and premises in the Abbey Gate, in the parish of St. Leonard, Leicester, from the 10th day of October 1840, at which time my tenancy thereof expires, until the 25th day of March 1841, for the sum of 10l., and I promise the said W. Marlow, in the mean time a right to plant fruit trees, and to come on the said land and premises with his servants and labourers for that purpose, whenever he shall think proper; and I further agree with the said W. Marlow to give him quiet possession of the said land and premises on the 25th day of March 1841. Witness this 19th day of September, 1840. John Thompson." The undersheriff admitted this document in evidence, although unstamped, and the plaintiff had a verdict. An application was afterwards made for a new trial, on the ground that a stamp was necessary to this agreement.

Miller shewed cause against this rule, and contended that the matter of the agreement was not of the amount of 20l., and therefore did not require a stamp under the provisions of the 55 Geo. 3, c. 184. The act of the undersheriff, therefore, in receiving this document in evidence, although unstamped, was perfectly correct.

Whitehurst, in support of the rule, contended that the subject-matter of the agreement must clearly be of the value of 20l., since the sum of 10l. was to be paid for the period from the 10th October to the 25th March following. If so, it was directly within the provisions of the Stamp Act, which applied to agreements, when the matter was "of the value of 20l. or upwards."

Cur. adv. vult.

Williams, J., thought on consideration, that the matter of the agreement could not be considered as of the value of 20l. as it was a new agreement for a certain term, for a specific sum of 10l. The rule must be discharged.

Rule discharged.—*Marlow v. Thompson*, H. T. 1842. Q. B. P. C.

BILLS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

NOTICES OF BILLS.

- For enabling Ecclesiastical Corporations to grant Leases. The Bishop of London.
 For enabling Incumbents of Benefices to grant Leases. The Bishop of London.
 For transferring the hearing and determining of certain Appeals from her Majesty in Council to the House of Lords. Lord Campbell.
 For making better provision for hearing Appeals and Writs of Error in the House of Lords. Lord Campbell.
 For the better Administration of Justice in the High Court of Chancery. Lord Campbell.

BILLS IN PROGRESS.

- For establishing Local Courts. Lord Brougham.
 [For 2d reading.] Lord Brougham.
 For improving the Law of Evidence. Lord Denman.
 [In Committee.] Lord Denman.
 For the Amendment of the Law relating to Bankrupts, and the better Advancement of Justice in certain Matters relating to Creditors and Debtors. Lord Cottenham.
 [For 2d reading.] Lord Cottenham.
 To improve the Practice and extend the Jurisdiction of County Courts. Lord Cottenham.
 [For 2d reading.] Lord Cottenham.
 To enable the Lord Chancellor to direct certain Proceedings in Bankruptcy, Insolvency, and Lunacy to be carried to the County Courts. Lord Cottenham.
 [For 2d reading.] Lord Cottenham.
 To amend the laws relating to Loan Societies. [In Committee.]
 For the Regulation of Apprentices. [In Committee.]
 For the better administration of Justice in the execution of Commissions of Lunacy. [For 2d reading.] The Lord Chancellor.

House of Commons.

NOTICES OF BILLS.

- To allow Writs of Error on Mandamits. The Attorney General.
 To alter the Law as to Double Costs, and other matters. The Attorney General.
 To amend the Law of Marriage. Lord F. Egerton.
 For the more effectual inspection of Houses, licensed at Quarter Sessions for the Insane. Lord G. Somerset.

BILLS IN PROGRESS.

- To amend the Law of Copyright. [For 2d Reading.] Lord Mahon.
 To regulate the Sale of Parish Property. [For 2d reading.] Sir E. Knatchbull.
 For Registering Copyrights and Assignments,

- and better securing the property therein. [In Committee.] Mr. Godson.
 For the Regulation of Buildings. [In Committee.] Mr. F. Maule.
 For the Improvement of certain Boroughs. [In Committee.] Mr. F. Maule.
 Municipal Corporations. [In Committee.]
 To consolidate the Queen's Bench, Fleet, and Marshalsea Prisons. Sir J. Graham.
 [In Committee.]
 Small Debt Courts Bills for
 Barnsley,
 Leicester, (jurisdiction 15/.)
 Honiton.
 Kingswinford,
 Liverpool.

THE EDITOR'S LETTER BOX.

We have deemed it necessary this week to publish a double number, owing to the accumulation of important bills before parliament, affecting the profession in various ways, and especially as most of the bills have originated with the Lords, whose papers are not published as in the House of Commons. We have added to these bills some other plans which have been proposed by persons of authority and experience, by way of substitute for Local Courts. The members of the profession will thus have the several schemes before them, and see which they *dislike least*.

Regarding the question on the certificate duty at page 260, a correspondent states, that whilst he agrees so far as relates to the first and second questions; as to the third, the proper course would be to take out the 12/ certificate, and present a memorial to the commissioners, stating the circumstances and praying a return of the 8/. This is to be left at the secretary's office, and it is in the discretion of the commissioners to grant a warrant directed to the Accountant General, requesting him to pay the 8/.

A Legal Discussion Society meets every Tuesday evening in a room at the Law Society, by permission of the committee, free of expence. It consists of the articulated clerks of the members of the society, and of the subscribers to the lectures. Whether this will meet the wants of our correspondents, "Unanimitas," "An Articled Clerk," and others, they best know. If yea, they had better write to the secretary of "The Law Students' Society." If nay, our publisher will assist the object, as before mentioned, by taking the names, with a view to a meeting.

We are informed that Mr. J. W. T. Vollans, has removed from Hull to East Rufford, as the successor of Mr. Gervas King Holmes, who has retired from practice.

The Legal Observer.

SATURDAY, MARCH 19, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE INCOME TAX, SO FAR AS IT CONCERNS THE PROFESSION.

We do not mean to dispute that, in the present state of the revenue, some great sacrifice is not required from the country at large, and we have no objection whatever to an income tax as the remedy, if it can be so adjusted as not to press improperly on particular classes. An income tax, grounded on property, is at the present juncture, a demand which the state has a right to make. A tax wholly fixed on property, would be as unjust as a tax wholly fixed on income. There is a large amount of property which is, at the present moment, if not wholly unproductive, yet very inadequately represented by profit. Large stocks in trade especially, stand in this situation. On the other hand, if *all* incomes are to be taxed alike, this is surely unjust. We trust we are not unduly swayed by the professional interest and feelings which we represent, but we cannot think that an income derived from a profession, should be taxed on the same scale as income derived from property. Both should be taxed, we willingly admit, but that they should not be taxed in the same proportion, we think can be easily shewn. The obvious distinction appears to us to be, that a transitory income should not pay so much as a permanent one. Suppose there are two brothers, the one has been left an income of 300*l.* a-year, derived from the 3 per Cents, and the other derives an income of the same amount from his profession. The first, by an income tax of 3 per cent., would have to pay 9*l.*, but if he were to die, his capital stock remains untouched. But if the latter died,

his income would go away altogether, and, except so far as, in some cases, the good-will of his business might be of some value, his whole capital would also cease to exist. Surely the same tax should not be imposed on both these incomes. The professional man either lives up to his income, or he does not. If he does, he can ill afford to pay any thing out of it; if he does not, you are taking from him that overplus which enables him to provide a fund which shall survive him. He does this, either by putting by a part of his income, or by insuring his life; and if he was taxed to the full amount, this would fall on the fund devoted for this purpose. Improvident habits cannot be protected, but the tax would, in this case, fall equally on the provident as the improvident. We do not think so much of an argument which we have heard used, that the state has no right to tax the labour of the mind so highly as income derived from property. We do not put it upon this. The property was at one time or other acquired by the labour of the mind, we presume; and we see no reason for not protecting its devolution to the present holder. All that we contend for is, that an uncertain, transitory income, which may diminish the next year without any fault of the owner, from circumstances not under his controul, and may, by death or illness, entirely cease, should not be taxed in the same proportion as an income derived from property which must remain the same, or nearly the same, and which is represented by a tangible *corpus*, or capital.

Another point to which we think it our duty to advert is, that a large part of the profession *already pays an income tax*. The certificate duty, which is paid by all attor-

neys in practice, is an income tax of the most odious kind, and if it is to be continued, this tax should be considered in part payment of any fresh duty. We would, however, respectfully suggest that this is the proper time for abolishing the certificate duty.^a In carrying through a great measure of this nature, the present amount of this duty is a mere trifle; and we think it highly unjust that any fresh tax on professional income should be imposed without considering existing burthens. We may strive in vain, but we will not the less cease to protest against a tax so unfair and arbitrary as the certificate duty.

This only affects a part of the profession, but with respect to all classes we have to say, that unless the distinction we contend for is made, great injustice will be done. It is easy for the man of property to retrench, to cut off this superfluity, or go without some passing enjoyment. But the professional man, how difficult is it for him to make any retrenchment? How often does his income depend upon his good name and fame! How transient a thing is professional reputation; how fickle is public favour! Now we do not mean to say that if a professional man makes any alteration in his expenditure, he will necessarily be injured; but we always find that he is very desirous not to do so, and this quite as much for the sake of appearance as for any other reason. Certain it is, that there are enough of ill-natured rivals in the crowded walks of professional life all over the country, ready to put the worst construction on every action. This state of things is no reason for exemption, but we think it is a reason for placing the tax as lightly as possible on professional incomes.

We make these observations in no spirit of hostility to the proposed measure. We believe that there is a sincere desire to do what is right on the part of the government, and we have thought it proper to state opinions which we believe to be generally entertained on this subject.

THE PROPERTY LAWYER.

COVENANT TO PRODUCE.

"WHATEVER other people say on the subject," said Lord Eldon, C., "I think that the practice of conveyancers has settled a great deal of law. I put this case on the

^a We believe that the average clear income of the attorneys and solicitors of England and Wales does not exceed 300*l.* a-year each. The town certificate is, therefore, a tax of three, and the country, of two per cent.

practice of conveyancers, and I am not sorry to have this opportunity of stating my opinion, that great weight should be given to that practice." *Howard v. Duane*, 1 T. R.

Among other rules well established by this practice is one, that a purchaser is entitled, either to the deeds themselves, or a covenant to produce them; but there has never been any decision that this rule extends to copies of deeds enrolled; and the case of *Campbell v. Campbell*, 2 Sug. V. & P. 119, is rather the other way. The point has, however, been decided by Sir L. Shadwell, V. C. The vendor of a piece of copyhold land, enfranchised in 1799, delivered to the purchaser two abstracts commencing in 1836, one of the title to the land, and the other of the title to the manor. The deed of 1799, which was forty years old, recited that the then lord, and the then owner of the land were respectively seised in fee, and several of the deeds relating to the lord's title, were bargains and sales enrolled, and therefore copies of them, as well as of surrenders and admittances, might be procured at any time. The vendor was unable to deliver to the purchaser the deed of 1799, or any of the prior instruments, but was willing to covenant to produce that deed. Sir L. Shadwell, V. C., said—"The general rule is, that when the purchaser cannot have the title-deeds, and there is no stipulation in the contract for the purchase regarding them, the purchaser is entitled to have, from the vendor or other holder of deeds, a covenant to produce them. I see nothing whatever in the present case which shows that the purchaser ought not to have a covenant for the production of all the instruments mentioned in the exception. The vendor has plainly shewn that he considered that, in order to make out his title, it was necessary that all those instruments should be abstracted, which are found in the abstract, and according to what I understand to be the practice of conveyancing, the purchaser is entitled to have a covenant for the production of them. In my opinion, the purchaser is entitled to have a covenant for the production of all the title-deeds and documents mentioned in the exception." *Cooper v. Emery*, 10 Sim. 609.

PRACTICAL POINTS OF GENERAL INTEREST.

DESERTED CHILD.

If a man does an act of which the probable consequence may be, and eventually is, death; such killing may be murder, although no stroke

be struck by himself, and no killing may be primarily intended; as was the case of the unnatural son who exposed his sick father to the air against his will, by reason whereof he died; of the harlot who laid her child under leaves in an orchard, where a kite struck it and killed it. And of the parish officers, who shifted a child from parish to parish till it died for want of care and sustenance, 4 Bla. Com. (by Stewart) 220; Russell on Crimes, book 3, c. 1. In a late case it appeared, that an unmarried woman had taken a place to go by a stage waggon, and that she started from Worcester in the evening, and was in the waggon at about 10 o'clock on that night at the Wellington Inn, on the Malvern hills, and that she must have left the waggon after that time, as she overtook the waggon at Ledbury. It further appeared, that she was delivered of this child at the roadside, between the Wellington Inn and Ledbury, and that after the child was born, she had carried it a distance of about a mile, to the place at which the child was found dead, which was also on the roadside. It further appeared, that this was a much frequented road, and that two waggon teams and several persons were on it about the time at which the child was left; and that a waggoner named Weaver, who was passing along the road heard the child cry, but instead of rendering assistance, he went on and told some other person, who went to the place where the child lay, and there found it dead from cold and exhaustion. The body of the child was quite naked. It further appeared, that the woman had arranged with a woman named Thomas to be confined at her house, and that she should be paid 3s. 6d. a week to take care of the child. Mr Justice Colman said, "if a party do any act with regard to a human being, helpless and unable to provide for itself, which must necessarily lead to its death, the crime amounts to murder, (see the case of *Rea v. Smith*, 2 C. & P. 449; *Rev v. Siunders*, 7 C. & P. 277; and *Reg v. Edwards*, 8 C. & P. 611.) But if the circumstances are not such, that the party must have been aware that the result would be death, that would reduce the offence to the crime of manslaughter, provided the death was occasioned by an unlawful act, but not such as to imply a malicious mind. There have been cases where it has been held, that persons leaving a child exposed and without any assistance, and under circumstances where no assistance was likely to be rendered, and thereby causing the death of the child, were guilty of murder. It will be for you, in the present case, to consider, whether the prisoner left the child in such a situation that, to all reasonable apprehension, she must have been aware the child must die, or whether there were circumstances that would make it likely that the child would be found by some one else, and its life preserved, because then the offence of the prisoner would be manslaughter only. It is impossible to say that the offence of the prisoner can be less than manslaughter. It is for you to consider, whether under all the circumstances, this child was

left in such a situation that there was a reasonable expectation that it would be taken up by some one else and preserved. Suppose a person leaves a child at the door of a gentleman, where it is likely to be taken into the house almost immediately, it would be too much to say that if death ensued, it would be murder; the probability there would be so great, almost amounting to a certainty, that the child would be found and taken care of. If, on the other hand, it were left on an unfrequented place, a barren heath for instance, what inference could be drawn, but that the party left it there in order that it might die. This is a sort of intermediate case, because the child is exposed on a public road, where persons not only might pass, but were passing at the time; and you will therefore consider, whether the prisoner had reasonable ground for believing that the child would be found and preserved." Verdict, guilty of manslaughter.

Reg v. Walters, 1 Car. & M. 164.

NOTICES OF NEW BOOKS.

An Essay on the present State of the Law respecting Equitable Mortgages by Deposit of Deeds, with Remarks on the recent Dictum of Lord Cottenham in the Case of Whitworth v. Gaugain. By Samuel Miller, Esq., Barrister at Law. H. Butterworth, 1842.

THIS is a well-timed Essay on an important subject. Our readers are aware, from several notices we have given of the case of *Whitworth v. Gaugain*, and particularly at p. 100, *ante*, that much alarm has been excited in the minds of equitable mortgagees by the dictum of Lord Chancellor Cottenham. The facts were briefly these: Mr. Cooke, a solicitor, owed his bankers a large sum, and deposited his title deeds to an estate, with a memorandum in writing, as a security. Subsequently judgments were obtained by other creditors against Mr. Cooke, and *elegits* were issued under the 1 & 2 Vict. c. 110: these operated as a legal charge upon the estate. In the suit instituted by the equitable mortgagees, fraud was charged between the defendant and the judgment creditors. The Lord Chancellor decided that the fraud was not established; but the plaintiff's counsel contended that the equitable mortgagee had priority. Lord Cottenham, in his judgment, said—

"According to the case made, the bill praying, not that the plaintiffs might be declared to be entitled in equity in preference to the *elegits*, but that the *elegits* might be declared fraudulent and void, as well as the pro-

ceedings which led to those *elegits*, he was bound to say that upon the evidence as it then stood there was no case made out to interfere with the defendant's title. At the bar, however, in the argument a totally different turn was given, or attempted to be given, to the plaintiff's case. It was attempted to be said that at law, independently of the question of fraud—that by law the plaintiffs had a preferable title to the defendants. Now if that were so, it was quite immaterial to the plaintiffs whether the *elegits* were fraudulent or not; in short, it would be a hopeless piece of fraud to manufacture that which, when manufactured, would have no effect against the plaintiffs' equity. It was clear, therefore, that was not the ground on which the bill was filed. The bill prayed that those judgments and *elegits* might be set aside as fraudulent and void as against the plaintiffs, with which the plaintiffs had nothing whatever to do, if they stood in the situation in which they had a preferable equity—an equity which would give them a preferable title as against the title claimed by the defendants. It was quite sufficient for the present purpose to say, that was not the case made: it was on totally different grounds. It was not made in the pleadings—it was not made in argument before the Vice-Chancellor, and it was only suggested, added his Lordship, when it came to be argued before him. He therefore abstained from going further into that case than to say, that if such a point had been made—if the bill had been framed for that purpose, and the claim of the plaintiffs founded on that supposed equity, he should have required a great deal more to satisfy him of the validity of that equity before he could interpose by interlocutory order; because he found these defendants in possession of a *legal title*, although not to all intents and purposes an estate, yet a *right and interest in the land*, which under the authority of an act of parliament they had a right to hold, the *elegit* being the creature of an act of parliament, and therefore they had a parliamentary title to hold the land as against all persons, unless a case of equity should be made to induce the Court to interfere."

Mr. Miller has, with much care and ability gone over all the cases bearing on the subject, and arrives at the conclusion that Lord *Cottenham's* dictum appears to be supported by the authorities. To remedy the evils, Mr. Miller suggests an act of parliament to render equitable securities effectual.

"The enactments (he says) necessary for this purpose will, it is conceived, be very simple, being almost confined to a declaration, that for the future no equitable mortgage by deposit of deeds, should be deemed valid, unless a memorandum in writing be signed by the mortgagor, expressing the purpose for which the deposit is made, and the extent of the security, but that every equitable mortgage with such a memorandum should be good against all sub-

sequent incumbrances, whether legal or otherwise. It may, perhaps, be desirable to determine by enactment, how far the deposit of a portion only of the title deeds shall be deemed sufficient, and to carry out the suggestion of Lord *Eldon* in the case of *Evans v. Bicknell*, 6 Ves. 190, by making an exception in favour of joint tenants, tenants in common, and other persons who cannot possess themselves of the title deeds of the estate in which they may be interested, but these will be mere matters of detail.

"One other provision, however, it is submitted, will be indispensable, and cannot be objected to by the holders of equitable mortgages for the great boon they will obtain in having their securities rendered indisputable, and that is to render the memorandum of deposit liable to the same stamp as is now imposed upon a legal mortgage; but as many cases may occur where equitable mortgages may be created for the sole purposes of commerce, and to exist for very short periods, the same regulations, it is submitted, should be made with regard to stamping these memoranda as are in force in relation to agreements. viz., that it should not be compulsory upon the holders to stamp them immediately, but that no equitable mortgage should be put in force, or be receivable in evidence, without the memorandum of deposit being stamped; and that if not stamped within twenty-one days, after its being signed, the stamp should only then be affixed on payment of a certain penalty.

"With the simple provisions above suggested, it is humbly conceived, the objections against equitable mortgages, so long urged on judicial authority, would be effectually removed, while merchants and capitalists would obtain all the advantages to be derived from them, and a considerable benefit would accrue to the revenue."

We cannot agree in the necessity of having these agreements stamped with the mortgage duty. The Stamp Act ought rather to be revised, and many of the duties reduced.

THE LOCAL COURT SCHEME.

THE observation has been frequently repeated that this is the only country which has not had the benefit of local jurisdictions to any extent; but it is neither correct in fact, nor is the inference attempted to be drawn from it a sound one. The Welsh judicature, now abolished, was of this description, and the provincial Ecclesiastical Courts, whose jurisdiction in matters of contentious litigation is about to be taken away, are more particularly so. It will be readily admitted, that it is the duty of the legislature to provide for the administration of the greatest practical amount

of justice; but there is another point of nearly equal importance, which appears to be too frequently lost sight of, namely, that the *manner* of administering justice should be such as to procure for it respect and deference in the eyes of the country. Of the three requisites in the administration of justice, *vis.* that it should be 1st. *satisfactory to the parties litigant*; 2d. *expeditious*, and 3d. *attended with reasonable expense*, the respective degrees of importance appear to us to stand in the order in which we have named them.

By those who have had much experience with litigation and its effects, it will have been observed that greater annoyance is occasioned to a party who feels that his appeal to the law has been unsuccessful owing to the misapprehension, incapacity, or prejudice (real or *supposed*) of the Judge, than to him who thinks that he has obtained justice though at a great expense. There is something in the nature and requirements of the Judge of a Superior Court which not only ensures the administration of the greatest practical amount of justice, but which also *satisfies* parties that they have received it in their own individual case.

Next in advantage to having such a decision in the first instance, is the power of having recourse to it by *appeal*; and it is a decided objection to the bill proposed by Lord Cottenham that no appeal from the decision of the local Judge is given. One reason why the decisions of a local Judge will frequently fail to give satisfaction is, that in many instances he will become imbued with local feelings and prejudices, and in many more he will be unjustly *suspected* of being so. This has been felt to be an objection even to the too frequent attendance on the same Circuit of a Judge of one of the Superior Courts, and it was advanced as an argument for the abolition of the Welsh Judges. The Country Ecclesiastical Courts, too, are now about to be abolished for all purposes of litigation, because the questions decided in them, though arising within the localities in which the Courts sit, will, in the opinion of all those competent to form one on the subject, be more satisfactorily disposed of by a *central tribunal in London*. Many of the Judges who have presided over the Consistory Courts of the Dioceses of England have been persons of considerable attainment, and the great text-book of Ecclesiastical Law was the work of the Chancellor of the Diocese of Carlisle. The stations in the church, of the persons who have usually presided as

Judges of Ecclesiastical Courts, has also been such as to give them a position in society, and invest them with a respect which the local Judges proposed to be appointed can scarcely be expected to attain; yet experience has shewn that the time has arrived for transferring the business of these provincial Ecclesiastical tribunals to London, and it is not a little singular that the same period should have been selected for proposing an exactly opposite course in the administration of the Common Law.

The establishing Courts of inferior rank for the disposal of business of a certain amount is open to the objection that there is not the same *description* of justice for all the suitors of the country. If it were practicable, it would be the duty of the legislature to give the same measure of justice, not merely in quantity, but in *quality*, to all. The nearer, however, an approach can be made to this, the better, and no new inferior tribunals should be created until the utmost has been done in diminishing the expense of proceedings in the Superior Courts, and in making them available to the utmost extent that is practicable in administering the justice of the country to rich and poor.

The suggestion of Master Dax, in his very able letter to the Lord Chancellor, to have a jurisdiction for causes of inferior amount within the jurisdiction of the Superior Courts, is a very valuable one, and we would impress it most particularly upon our readers, and those persons in *authority* who will have the conduct of the alterations now about to be made. The sitting of one Judge for the purpose of taking matters under a given amount, with the power of sending cases of difficulty to the full Court, would be attended with the double advantage of delivering the latter from business of a frivolous nature, and of securing to causes of small amount, when the question to be determined in them is important, the decision of the highest tribunal. For it must be remembered as one of the disadvantages of creating inferior Courts, to determine causes below a certain amount, that the sum to be recovered is not always a criterion of the *difficulty*, or even the *importance* of the case, and that such a distribution of the business would still leave to the superior Courts questions of a frivolous nature, whilst it would send questions of difficulty to the inferior Court, merely because they arose in actions between humble individuals.

In another suggestion in the letter of Master Dax, that in addition to the sitting

of a separate Court for business of a more trifling nature, much might be left to the *principal officers* of the Courts, particularly on questions of disputed accounts, we entirely concur: the Masters of the different Courts are men of ability, and competent as practical men, to assist the Judges materially in the discharge of this important duty; indeed, the Masters have now many matters of great importance sent to them from the Bench for their decision, quite independent of their duties as taxing officers. If it be said the Masters will not have leisure for the additional labours suggested, let others be appointed.

We have received the following letter as to the *compensations* to be made, if the bill should pass:

In the abstract of the clauses of Lord Brougham's Local Courts Bill, at p. 373, *ante*, I do not observe any one relating to compensation to persons now holding appointments under the present system of *courts of requests, county, and hundred courts*. Surely these appointments will not be taken away, without an adequate remuneration, or it would work a manifest injustice, which is contrary to the spirit of the constitution. Many men now holding such appointments have sacrificed professional employment, and surely after many years service as registrars of courts, whereby they mainly depended for subsistence, they are not to be driven to work up a practice (not so easy a thing, by the bye, now-a-days) or be compelled to accept subordinate situations.

I agree that the persons from whom the judges of such a court are to be elected should extend to attorneys of fifteen or twenty years actual practice.

Another correspondent observes that Mr. Dax, in speaking on the subject of local courts, says, "one great objection, in my mind, to the courts, *as proposed*, is this, that no counsel or attorneys are to be allowed to practise there, or if they do, they are not to be entitled to be paid for it." Surely he is mistaken as to this, for in the bill introduced by Lord Brougham (as printed in the *Legal Observer*, p. 374,) I find an express provision "that any persons admitted Barristers at Law may practise as advocates before the said judges in ordinary, and any persons admitted Attorneys of any of the Superior Courts at Westminster, may practise as advocates, attorneys, or agents, before the said judges." I certainly agree with Mr. Dax, that any provision in a local court bill, prohibiting counsel and attorneys from practising, would be an "utter denial of justice to numbers of persons," and I hope never to see such a provision; but I am not aware to what bill he refers, for it appears that his observations were made on this head before it was reported that the Lord Chancellor intended introducing a *local court bill*, and therefore I

may presume the provisions of such bill are as yet unknown. AMICUS.

[Mr. Dax appears to have referred to Lord Cottenham's County Court Bill. *Ed.*]

JUDGMENTS AS THEY AFFECT REAL PROPERTY.

In concluding this series of papers, it will be necessary to call attention to the recent case of *Whitworth v. Gaugain*, M. S., before the Lord Chancellor, 26th June, 1841, in which the question came incidentally before the Court, whether an equitable mortgagee was entitled to priority over a subsequent judgment creditor without notice, who had obtained possession of the land under an *elegit*.

Lord Cottenham, in this case, observed, that the judgment creditors were in possession of a legal title, although not to all intents and purposes an estate, yet a right and interest in the land, which, under the authority of an act of parliament, they had a right to hold, the *elegit* being the creature of an act of parliament; and that, therefore, they had a parliamentary title to hold the land as against all persons, unless a case of equity should be made to induce the Court to interfere: and the general tendency of his opinion appears to have been, that a judgment creditor without notice, in possession under his *elegit*, would have preference to an equitable incumbrancer with a prior charge; and, following out this principle, it seems clear that such preference would also exist as against every other equitable interest. This opinion of Lord Cottenham, though extra-judicial, appears to be so perfectly consistent with principle, that there can be little doubt that if the point should come directly before the Court, his view will be supported. There is nothing in the opinion at variance with those cases in which judgments entered up after a binding contract for sale have been recognized by Courts of Equity as not affecting a purchaser, inasmuch as the determinations in those cases appear to have been made with reference to judgments *before execution*, and consequently, whilst they constituted merely a general security upon the estates, chattels, and property of the debtor. *Finch v. Earl of Winchelsea*, 1 P. Wms. 282: *Lodge v. Lyseley*, 4 Sim. 75.

It is to be observed, that Lord Cottenham refers to the affidavit of the defendants as denying any notice of the plaintiff's equity

at the time of the *elegit* being sued out. As, however, the 13th section of the new act makes a judgment an equitable charge on the lands from the time of *its being entered up*, it may be questioned whether a judgment creditor would not become a purchaser from that time, so as to make it immaterial that he had notice at the time of suing out his *elegit*, if he was ignorant of the previous equities when he obtained his judgment, in conformity with the rule in equity which refers notice to the period of the purchase, and not to that of getting in the legal estate. *Willoughby v. Willoughby*, 1 Term Rep. 763.

If the proper searches are, on any occasion neglected, solicitors should always require an indemnity against the consequences of such neglect, from the persons for whom they are professionally engaged. A form similar to the following, may with propriety be adopted :

Dated , 184 .

‘I , [purchaser] do hereby release and exonerate my solicitors, Messrs. , from making any search for the purpose of ascertaining whether any judgments, decrees, orders, or rules affect the property situate, &c. which I have lately agreed to purchase of , [vendor.]

Signed , [purchaser.]

NEW BILLS IN PARLIAMENT.

PRACTICE AND PROCEEDINGS IN LUNACY.

This bill, which we noticed last week, contains the following clauses.

1. *Power to Lord Chancellor to appoint two commissioners.*—That it shall be lawful for the Lord Chancellor to appoint two fit and proper persons, being respectively serjeants or barristers at law of not less than years standing at the bar, to be called “the Commissioners in Lunacy,” and that in future all commissions in the nature of writs *De lunatico inquirendo* shall be directed or addressed to such commissioners, or one of them; and that such commissioners shall hold their offices during good behaviour, and shall jointly and severally have, perform, and execute all the powers, duties, and authorities now had, performed, and executed by commissioners named in commissions in the nature of writs *de lunatico inquirendo*.

2. *Oath of commissioners.*

3. *Power to Lord Chancellor to direct that commissioners shall perform duties of masters in lunacy.*—That it shall and may be lawful for the Lord Chancellor from time to time to or-

der and direct that any of the inquiries and matters connected with the persons and estates of lunatics, usually referred to the masters in ordinary of the High Court of Chancery, shall be referred to such commissioners, or one of them; and such commissioners shall, jointly or severally, have, perform, and execute all the powers, duties, and authorities relating to the said inquiries, and matters so to be referred to them as aforesaid, now had, performed, and executed by the masters in ordinary of the said Court of Chancery, and such other duties for the security and advantage of lunatics and their estates as the Lord Chancellor shall from time to time order and direct.

4. *Commissioners to be ex officio visitors of lunatics.*—That the said commissioners shall, by virtue of their appointments to be such commissioners as aforesaid, be and become visitors for superintending, inspecting, and reporting upon, under the order and direction of the Lord Chancellor, the care and treatment of all persons found idiot, lunatic, or of unsound mind, by inquisition, jointly with the three visitors appointed under the 3 & 4 W. 4, c. 36, and shall severally have, perform, and execute the like powers, duties, and authorities as are had, performed, and executed by the one of the said visitors being a barrister.

5. *Commissioners to execute duties as Lord Chancellor shall order. Power to Lord Chancellor to appoint special commissioners.*—That the commissioners to be appointed by virtue of this act shall execute commissions in the nature of writs *de lunatico inquirendo*, and shall conduct inquiries connected with lunatics or their estates, and shall perform all other duties to be committed to them by virtue of this act, either separately or together, and at such places, and within such times, and in such manner, as the Lord Chancellor shall from time to time order and direct: Provided always, and it is hereby declared, that nothing in this act contained shall be deemed or taken to prevent the Lord Chancellor from issuing any commission in the nature of a writ *de lunatico inquirendo*, addressed to any fit and proper person or persons, in addition to such commissioners so to be appointed as aforesaid, if he shall, upon any occasion, deem it proper to do so.

6. *Power to appoint successors to commissioners.*

7. *Practice.*—That it shall and may be lawful for the Lord Chancellor from time to time to make such orders as to him shall seem fit and proper, for regulating the form and mode of proceeding before and by the said commissioners, and the practice, and the taxation and allowance, and payment of costs, in matters in lunacy.

8. *Juries.*—That it shall and may be lawful for the Lord Chancellor from time to time to make such order or orders as he shall deem fit for regulating and fixing the number of jurymen who shall be sworn to try inquests on commissions in the nature of writs *de lunatico inquirendo*; provided that every inquisi-

tion on such commissions shall be found by the oaths of men.

9. *Officers, &c.*—That from and after the passing of this act such officers, clerks, and messengers in the office of the said commissioners as the Lord Chancellor, with the advice and consent of the Master of the Rolls and Vice Chancellors for the time being, or one of them, shall determine to be necessary and proper, shall and may be from time to time appointed.

10. Office of "clerk of the custodies" abolished. 2 & 3 W. 4, c. 111; 3 & 4 W. 4, c. 84.

11. Lord Chancellor to fix tables of fees, to be paid into "suits fee fund."

12. Fees formerly payable to Lord High Chancellor to be paid into fee fund. 2 & 3 W. 4, c. 122.

13. Salaries of commissioners. [Amount not stated in the bill.]

14. Salaries of officers, clerks, &c., and allowances to commissioners and secretary of lunatics.

15. Compensations to officers.

17. Act may be amended or repealed.

COPYRIGHT.

The following is an abstract of the bill brought in by Lord Mahon, Sir Robert Inglis, Mr. Gladstone, and Mr. Charles Howard. We are glad to see the measure in such good hands, and wish it success.

1. Repeal of former acts, 8 Anne, c. 19. 41 Geo. 3, c. 107; 54 Geo. 3, c. 146 (extending copyright in books).

2. Interpretation clause.

3. Copyright in any book hereafter to be published in the lifetime of the author to belong to the author and his assigns for the author's life, and for twenty-five years, commencing at his death; and if published after the author's death, to belong to the proprietor of the manuscript for thirty years from the first publication thereof.

4. In cases of subsisting copyright, the extended term to be enjoyed, except when it shall belong to an assignee for other consideration than natural love and affection; in which case it shall cease at the expiration of the present term; unless its extension shall be agreed to between the proprietor and the author.

5. Power to judicial committee of the privy council to license the republication of books, which the proprietor refuses to republish after the death of the author.

6. One copy of every book to be delivered at the British Museum.

7. Mode of delivering at the British Museum.

8. A copy of every book to be delivered within a month after demand for the use of the following libraries: Bodleian library, public library at Cambridge, Advocates of Edinburgh, Trinity college, Dublin.

9. Publishers may deliver the copies to the libraries instead of the Stationers' Company.

10. Penalty for default in delivering copies for the use of the libraries.

11. Book of registry to be kept at Stationers' Hall.

12. Party making or causing to be made a false entry in the book of registry to be guilty of a misdemeanor.

13. Entries of copyright may be made in the book of registry.

14. If any person be aggrieved by any entry in the book of registry, he may apply to the Lord Chancellor, Master of the Rolls, Vice Chancellor, Court of law in term, or Judge in vacation, who may order such entry to be varied or expunged.

15. Remedy for the piracy of books or parts of books by action on the case. Proviso for Scotland.

16. In actions for piracy, the defendant to give notice in writing of the objections to the plaintiff's title on which he means to rely.

17. Mode of proving the publication and identity of books in proceedings for piracy.

18. No person shall import into any part of the British dominions for sale any book first composed, &c. within the British dominions and reprinted elsewhere. Penalty on importing, selling or keeping for sale any such books, forfeiture thereof, and also 10*l.* and double the value. Books may be seized by officers of customs or excise, who shall be rewarded.

19. Copyright in Encyclopædias, periodical works, and works published in series, to be in the publisher or conductor thereof, and proof of payment to the parties employed by him to be *prima facie* evidence of his property in their articles. Proviso securing the right of authors who have reserved the right of publishing their articles in a separate form.

20. Proprietors of Encyclopædias, periodical works, and works published in series to be at liberty to enter at once at stationers' Hall, and thereon to have the benefit of the registration of the whole work.

21. The provisions of 3 & 4 W. 4, extended to musical compositions, and the term of copyright, as provided by this act, applied to the liberty of representing dramatic pieces and musical compositions.

22. The proprietor of the right of dramatic representation shall have all the remedies given by the act 3 & 4 W. 4.

23. No assignment of copyright of a dramatic piece shall convey the right of representation unless an entry to that effect shall be made in the book of registry.

24. Power to grant injunctions in case of piracy. Proviso for Scotland.

25. Mode of proving copyright, &c., in Colonial Courts.

26. Books pirated shall become the property of the proprietor of the copyright, and may be recovered by action, or seized by warrant of two justices.

27. No proprietor of copyright, commencing after this act, shall sue or proceed for any infringement before making entry in the book of registry. Proviso for dramatic pieces.

28. Copyright shall be personally.

29. Saving the rights of the Universities and the Colleges of Eton, Westminster and Winchester.

30. Proviso for saving all rights and all contracts and engagements subsisting at the time of passing this act.

31. Act to extend to all parts of the British dominions.

32. Act may be amended or repealed during the present session.

CHANCERY REFORM.

CONSOLIDATION OF OFFICES.

WE have not time or space at present to pursue the general subject of Chancery reform; but it may be useful to keep alive the attention of the profession to the necessity of bringing all the offices in which the business of the Court is transacted under one roof. People are too much in the habit of thinking lightly of the loss of small portions of time, but every five or ten minutes is of consequence in dispatching the vast mass of business which must be got through in a few hours, at offices which are scattered in various parts of the Law District. We are sure that great advantage will arise by bringing them together in one building. There let writs of all kinds be issued, appearances entered, bills filed, answers and affidavits sworn and filed, causes set down, orders drawn up, and, in short, all the machinery of the court worked.

For the present, the courts must continue to sit, and the masters to conduct their inquiries in different places, but the time will come when Courts, Masters, Registrars, Record-keepers and all the subordinate officers will be, as it were, in the same college, and under one supervision. Then we shall see a very different state of activity from the present in all the departments of administering justice.

SUPERIOR COURTS.

Lord Chancellor.

PRACTICE.—INROLMENT.

If a decree is fully set forth by way of recital in an inrolment, it is not necessary to the validity of the inrolment to state the decree again.

The inrolment of a decree or order pronounced by the Vice Chancellor, is not irregular for want of the Vice Chancellor's signature to the docket: it is sufficient if the Lord

Chancellor has signed it: Secus, as to a decree or order made by the Master of the Rolls.

This was a motion to vacate the inrolment of a decree and of an order, made on a petition in the same cause, on the grounds of irregularity. The decree and order were pronounced by the *Vice Chancellor* in 1818, when the party now moving was an infant, and they were inrolled in 1840 by the adverse parties. The grounds of irregularity were, first, that the inrolment was made without the order *nunc pro tunc*; secondly, that the docket of the decree and order, whereof one of them had not the signature of the *Vice Chancellor*, the judge who pronounced them; and thirdly, that although the decree and order were both set out in the recitals, in the inrolment, and the order on the petition was again stated at length; the decree was not so stated.

Mr. *Wakefield*, in support of the motion, after the decree and order were pronounced, cited, on the first ground of alleged irregularity, *Parker v. Downing*,^a and the general order of court.^b On the second ground, he cited Mr. Daniel's Chancery Practice,^c a work of great accuracy, which states that the docket, preparatory to the inrolment, must be left for the *Vice Chancellor's* signature, if the cause was heard by His Honor, or for the signature of the *Master of the Rolls* if the cause was heard there, after which it is taken for the *Lord Chancellor's* signature. On the third ground of irregularity he urged the reason of the thing. If it was necessary to repeat the order in the body of the engrossment after being stated in the recitals, as was the fact, it was necessary also to repeat the decree, which was not done.

Mr. *Tinney*, *contra*.—It was immaterial whether this decree and order were regularly inrolled or not, as neither could be re-heard after a lapse of twenty years and more, not even by bill of review, *Smith v. Clay*.^d There is a better note of Lord *Camden's* judgment in that case in *Brown's Reports*,^e than in *Ambler*, and it is laid down that the twenty years within which a bill of review may be brought, are to be counted from the pronouncing of the decree, not from the inrolment, and the limitation is adopted in equity by analogy with the limitation to writs of error in courts of law, under the statute.^f The party moving now came of age in 1827, and the limitation after disability, was five years under the statute, or ten years here, so that as he cannot have a bill of review, he cannot have a re-hearing for any irregularity. The party is absolutely barred by lapse of time. But even on the point of form, it was clear that the decree was well inrolled, it was fully set out, and not necessary to be set out again; if the order was twice set out, it was surplusage. It is not necessary that the docket of a decree pronounced by the *Vice Chancellor* should be signed by

^a 1 Myl. & K. 634.

^b Beam. Ord. 206.

^c 2 vol. pp. 680, 681.

^d Ambler, 645.

^e 3 Bro. C. C. 639, n.

^f 10 & 11 W. 3, c. 14.

him, so stated in Smith's Practice.^s It is sufficient if it is signed by the *Lord Chancellor*, whose decree it is to all subsequent purposes.

Mr. Wakefield.—A supplemental bill has been filed in January 1841, praying, what is inconsistent with the decree, and the defendants by their answer set up the inrolment of the decree as a bar. The House of Lords have recently decided in *Brooke v. Champenowne*,^h that the period of five years given to a person after disability for appealing there, is to be counted from the inrolment, and not from the date of the decree.¹ The same mode of counting ought to prevail in this court.

The *Lord Chancellor* said that in the copy of the inrolment before him, the decree appeared to him to be sufficiently enrolled: the decree is fully recited, and then the order, and the order is repeated. With respect to the necessity of the *Vice Chancellor's* signature, Mr. Smith was one way, Mr. Daniel was the other way; the reason of the thing certainly was with Mr. Smith, and the probability was that he was right, and Mr. Daniell wrong for once in his book. The better way, however, would be, to direct an inquiry of the Six Clerks, whether the docket required the *Vice Chancellor's* signature to decrees or orders pronounced by him. If the answer should be that the signature is not necessary, then the motion would be refused with costs, and it would not be necessary to consider the other objections to the motion.

The answer returned by the Six Clerks was, that the *Vice Chancellor's* signature was not necessary.

Dermott v. Keeley, January 31st, 1842.

Rolls.

WILL, CONSTRUCTION OF.—RIGHTS OF DEVISEES AND PERSONAL REPRESENTATIVES.

Where a testatrix by her will and codicil devised an estate upon certain trusts, and subsequently entered into a contract for sale of such estate, but died before the contract was completed: Held, that according to the true construction of the last will act, the purchase money belonged to the personal representatives of the testatrix, and not to the devisees named in her will.

In this case a petition was presented on the part of the defendants, Charlotte, Catherine, and Jane Chapman, the personal representatives of Ann Chapman, deceased, the testatrix in the pleadings named, claiming payment of a sum of 2320*l.* standing in the name of the Accountant General, to the credit of the cause, to the account of the personal representatives or devisees of Ann Chapman, deceased, being the amount paid into Court in respect of a purchase of certain premises which belonged to the testatrix, and had been contracted to be sold by her, but the contract relating to which had not been completed during her life. It

appeared, that the testatrix by her will, dated in 1834, devised the premises in question to a party who afterwards died, and by a codicil dated in June 1838, she devised the same to the Earl of Winterton for life, with remainder to his children. On the 8th of January she entered into a contract with the trustees of a Wesleyan Chapel for sale of the premises to them, and a reference having been ordered to ascertain whether it would be fit and proper for the trustees to complete the contract; the master by his report, dated the 30th of June 1839, certified that it was fit and proper that the contract should be completed. This report was confirmed in the July following and an order made to settle the proper conveyance, but before any further proceedings were had, the testatrix died, and the question now was, whether her devisees, or personal representatives, were entitled to the purchase money.

Tinney and Law, for the personal representatives contended, that by entering into the contract, the testatrix had converted the property into personalty, and as the 24th section of the last will act declared that every will should be construed with reference to the real and personal estate comprised in it, to speak and take effect as if it had been executed immediately before the death of a testator, their clients must be declared entitled.

Pemberton and Dixon for the devisees, urged that by the 23rd section of the act referred to, it was provided, that no conveyance or act done subsequently to the execution of the will, except an act amounting to revocation, should prevent the operation of a will, and testators never supposed that by entering into contracts for sale they so altered the dispositions they had made of their real property as to deprive their devisees not only of the estate, but of their purchase-money also.

Feb. 23rd.—*The Master of the Rolls*, having taken time to consider, now delivered judgment. His Lordship said that the defendants, the devisees, claimed on the ground that the contract had been annulled by the testatrix, and they also say, as the fact is, that according to the will act of the 1 Vict. c. 26, the will of the testatrix was not revoked, and they claim as devisees under it. There was an express enactment in the act referred to, by which it was declared that no will should be rendered inoperative except by an act amounting to revocation, and it was said, that although the testatrix contracted, she did not in any manner revoke her will. Revocation was not the only mode of revoking a will, for if the testatrix had expressly devised the purchase money to other parties, that would have amounted to a revocation of the original devise. Here she had contracted to sell, and had thus acquired a beneficial interest in the purchase money, and although she had a lien on the purchase money, she had not a beneficial interest in the land. Being of opinion, therefore, that by the contract she disposed of her beneficial interest in the land, and had only an interest in the purchase money; his Lordship said he was of opinion, that the devisees had no beneficial

^s 2 vol. p. 4.

^h 4 Clark & F. 247.

¹ But see the standing order, No. 118, as amended in 1829, 6 C. & F. 974.

interest in such purchase money, and that it belonged to the personal representatives of the testatrix.

Furrer v. Earl of Winterton, Jan. 13, and Feb. 23d, 1842.

Vice Chancellor of England.

PRACTICE.—DISMISSAL OF BILL.

Semble, where a sole plaintiff dies, and the suit is not revived within a reasonable time, the defendant may move that the suit be revived within a given time or dismissed.

The bill in this case was filed by Mrs. Canham, for the arrears of an annuity charged upon the estates of Sir Francis Vincent, and also against his bailiff, and for a receiver. On the 16th Nov. 1837, before the answers were put in, Mrs. Canham died, and the question was, whether Sir Francis Vincent was entitled to an order for the plaintiff's representatives to revive, or that the bill might be dismissed. A similar application was made in June 1838, but was refused on the ground of its being premature, and the principal question was, whether such an order could be granted where the application was contested.

Lloyd, for the motion, referred to *Canham v. Vincent*, 8 Sim. 277; and also to a case of *Chowick v. Dimes*, before the Master of the Rolls on the 20th Nov. and 8th Dec. 1840, where a suit had been instituted to redeem a mortgage, and the sole plaintiff having died, the defendant moved that the plaintiff might revive within a given time or the bill be dismissed. He also cited *Jones v. Massey*, 17th Dec. 1805; *Turner v. Coles*, 28th March 1808; and *Brown v. Warren*, 4th February 1809. Although it did not appear that the representatives of the deceased plaintiff in those cases appeared to dispute the order, yet the situation of the parties was similar to those in the present case.

The Vice Chancellor asked, whether the cases referred to were cases in which injunctions had been granted; but no information could be given as to this circumstance.

Chandless opposed the motion, and said, that no case could be referred to of the order asked for by the plaintiff being granted, where the motion was resisted. The Master of the Rolls was of opinion, that an order for the dismissal of a bill operated as a dissolution of the injunction; but Lord Cottenham and Lord Eldon were of a different opinion.

The Vice Chancellor said, it was important to ascertain whether any cases could be found where the order now sought had been obtained, which were not cases of injunction, and the motion had better stand over for the purpose of enquiry being made.

On a subsequent day, the case was again mentioned, when Mr. Lloyd having stated that in two of the cases referred to they were not cases of injunction, his Honor made the order.

Canham v. Vincent, Jan. 20, 1842.

[A similar application was made to Mr. Vice Chancellor Bruce on the 7th inst. by Mr. Keene,

when the recent order in *Canham v. Vincent* was mentioned; but his Honor said it was too important a point of practice for him to settle, and therefore requested that the application might be made to the Lord Chancellor. 7th March, 1842.]

Vice Chancellor Wigram.

PRACTICE.—CONSTRUCTION OF THE 23RD AND 24TH ORDERS.—COPY OF BILL.

It was not meant by the 23d and 24th orders of August, that the prayer that the party served may be bound, should be inserted in any particular part of the bill.

Sed, in future it should be repeated in the prayer of process, and in the general prayer of the bill.

Mr. Bilton applied that the clerk in Court might be directed to enter the memorandum of service, and the time thereof, pursuant to the 23d and 24th orders of August last. The 23d order directed that the bill in certain cases should not pray a subpoena to appear and answer, but merely that such party on being served with a copy of the bill might be bound by all the proceedings in the cause. The bill in this case was for a receiver and an injunction; and prayed that the defendant, on being served with a copy of the bill, might be bound by all the proceedings. The clerks in court refused to enter the memorandum of service, and the time requiring that the prayer should be repeated in the prayer of process. He submitted this was unnecessary. If the objections were insisted upon, it would be requisite to amend the bill, and serve new copies. The clerks in court stated that they were acting under the advice of counsel.

Wigram, V. C.—If it has been the practice to have it in the prayer of process, I cannot alter it.

On the following morning, His Honor said, he thought it was quite unimportant in what part of the bill the prayer that the party might be bound was inserted.

March 15.—Mr. Romilly applied this morning on behalf of the Clerks in Court, for the direction of the Court, and submitted that they were right in their view of the meaning of the orders.

His Honor said, if there was doubt about the correctness of his opinion, application had better be made to the Lord Chancellor.

Gibson v. Haines, March 13 and 14, 1842.

[We are informed that the difficulty was mentioned to Lord Lyndhurst, who said, that as a matter of convenience to the Clerks in Court, the prayer that the party might be bound should be repeated in the prayer of process. This, however, was not to have a retrospective effect, but exclusively to future proceedings.]

Queen's Bench.

[Before the four Judges.]

PRISONER.—ESCAPE.

A prisoner arrested in Hampshire was transferred by habeas corpus to the custody of the marshal of the Queen's Bench, and afterwards by a habeas corpus cum causa, to Newgate, to answer in the Central Criminal Court a charge of perjury. He afterwards procured bail on this charge, and then was taken, without any legal authority, to the Queen's Bench Prison, where, after some hesitation, he was received. He afterwards escaped; Held, that the defendant was not liable to an action of escape as the defendant had not the man in legal custody, and consequently could have no right to detain him. The escape was complete in law when the man was removed from Newgate.

Lord Denman delivered judgment.—This was an action of escape, and the question was, whether the man at the time of the alleged escape was legally in the custody of the defendant, so as to render him responsible, the defence being that he was not in the defendant's custody. It appeared that the man had been arrested in Hampshire for a large sum of money; he obtained a *habeas corpus*, and was brought up to London, and was committed to the custody of the defendant. He then petitioned the Insolvent Debtors' Court for his discharge, and on the hearing that Court ordered him to be discharged, at the end of 15 months' custody within the walls. After that he was brought before the Central Criminal Court on an indictment for perjury; he pleaded not guilty, but not being bailed, he was committed to Newgate for custody. He went thither, but being afterwards bailed, the keeper of Newgate carried him back to the Queen's Bench Prison. The officer there at first refused to receive him, but at last consented to take him into the prison. Then the question arises, what was the nature of this custody. If it was not legal, it was not such a custody as would give this plaintiff a right of action as for an escape. It appears to us that it was not a legal custody. The defendant had a right to the custody of the man in the first instance. The order of the Insolvent Court remanding him, did not affect the validity of that custody. But when in obedience to the second *habeas corpus*, the defendant brought the man before the Central Criminal Court, his charge of the man entirely ceased, and he had no more right to continue the custody of the man than had the sheriff of Hampshire. The man might never have found bail; he might have been convicted and transported, or he might have escaped from Newgate before or after his trial. In all or any of these supposed cases, the defendant would not have been liable. How then can the man be said to have been in his custody during the time that the man was in Newgate? If he was

not in the defendant's custody during that time, did he lawfully come into that custody after that time? The jailer brought him from the Central Criminal Court to the Queen's Bench Prison. But the jailer had no authority for doing this, and thus conferring on the defendant the right to detain the man, he conferred in fact no such right of detention. The authority of the defendant to detain him was determined on his being transferred to Newgate on the authority of the warrant of the Central Criminal Court. The second *habeas corpus* puts the right of the defendant to detain the man out of all question, for that writ removed the prisoner with the cause from the custody of the defendant, and the sheriffs of London had possession of both, and the defect in the plaintiff's case is the want of any right shewn to be in the jailer of Newgate to return and restore the man into the custody of the defendant. There is a passage in Coke's Institutes,^a in his commentary upon the stat. of Westm. 2, which is to this effect: "This act extends to all keepers of jails, and therefore, if one hath the keeping of a jail by wrong or *de facto*, and suffereth an escape, he is within this statute, as well as he that hath the keeping of it *de jure*," which was quoted in argument for the plaintiff here. But that passage supposes the committal to have been made by proper authority, and Lord Coke only states that the wrongful officer shall not protect himself by his usurpation of the office. That does not bear on the present case. In Bacon's Abridgment,^b the general definition given is—"Escape, in general, is understood where any person, who is under lawful arrest and restrained of his liberty, either violently or privily evades such arrest and restraint, or is suffered to go at large before delivered by due course of law." Under the letter A. in the same title, several cases are collected which shew what is meant by a lawful arrest. A distinction is there taken between an arrest lawful for all purposes, and lawful only to bind the sheriff in an escape. In *Boothman v. The Earl of Surrey*,^c facts the converse of the present occurred. The bailiff of a liberty was there held liable to an escape for having delivered the prisoner out of the limits of the liberty where he was lawfully in custody into the hands of the sheriff. Mr. Justice Ashurst there observed—"As far as the old authorities go, the execution was complete by the defendant's arresting the prisoner within his bailiwick; if so, the prisoner could not be removed to the sheriff of the county without some legal warrant. This is as much an escape in the defendant, as if he had carried the prisoner into another county." According to that case, the warrant of the sheriff whose officer the keeper of Newgate is in bringing the prisoner to the Queen's Bench without a legal warrant; and if so, the defendant can-

^a 2 Inst. 382.^b Tit. Escape.^c 2 Term Rep. 5.

not be guilty of an escape for letting him out of that prison. We say, that unless the defendant of his own will wrongfully permitted the man to escape, he cannot be liable in this action. Did he so? The evidence shews that he or his deputy (which is the same thing) was aware of the irregularity, and yet received the prisoner. It cannot be supposed that in any case the defendant was ignorant of the fact that there was no warrant for his receiving the prisoner. If ignorance of that fact cannot prejudice him; he cannot be prejudiced, except a knowledge of the fact is to be presumed against him. It will be said here, that the presumption must be against the defendant; and that all the evidence shews that that presumption must in fact be made. But we think that there is no ground for making any such presumption. If the defendant had no authority to receive the prisoner, the keeper of Newgate had no right to bring him there. The escape, therefore, had taken place when the jailor brought him away from Newgate, and delivered him to the defendant's officer, and that escape was voluntary on the part of the jailor. All that the defendant therefore can be presumed to know is, that he received an escaped prisoner, whom he knew he could not legally detain. The mere act of receiving the prisoner under such circumstances does not, therefore, render him liable, for it did not constitute a lawful custody. It did not bind the defendant as against the present plaintiff. It was a mere detention unlawfully, and against the will of the prisoner, and could have no legal effect with respect to his creditors. On the whole, therefore, we are of opinion that the rule for the nonsuit must be made absolute.

Brown v. Chapman, Esq., H. T. 1842.
Q. B. F. J.

Queen's Bench Practice Court.

MANDAMUS.—INDICTMENT.—PROCESS.

An indictment having been found at quarter sessions against a defendant for keeping a gaming house; and the chairman at sessions having refused to grant process against the defendant, on the ground of the length of time which had elapsed between the finding of the indictment and the application, the Court refused to grant a mandamus to the chairman, requiring him to issue such process.

Wilson moved for a mandamus, to be directed to the chairman of the Middlesex quarter sessions, commanding him to issue process against a defendant, against whom an indictment for keeping a common gaming house had been found by the grand jury. The prosecutor now stated in an affidavit that the indictment had been found in June 1841; that on the 6th July he went to Paris, and that he returned from thence in the month of December, for the purpose of ascertaining what steps had been

taken against the defendant. Finding that his attorney had omitted to take the proper proceedings to secure the apprehension of the defendant, he caused an application to be made on the 3rd January, 1842, to the chairman of the Middlesex sessions for process, but the motion was rejected, on the ground of the long interval which had been allowed to elapse since the indictment had been found. The affidavit further alleged that the prosecution was *bona fide*, and that the prosecutor was desirous of proceeding at once against the defendant.

Williams, J.—I never heard of such an application before. I cannot say that the reason given by the chairman of the quarter sessions for refusing to grant process was a bad one, and I shall not interfere. If the circumstances of the case are at all varied since the application was made, the prosecutor had better renew it at sessions.

Rule refused.—*Regina v. Russell*, H. T. 1842. Q. B. P. C.

APOTHECARIES' ACT.—CHEMIST.

In an action by a chemist, for medicine and attendances, the question for the jury is not the character in which the defendant charges, but in which he acts; it being suggested that the charges made are within the Apothecaries' Act, (55 Geo. 3, c. 194, s. 14.)

This was an action to recover 7*l.*, the amount of a chemist's bill, the items of which were charges for medicine and attendance. The cause was tried before the secondary of London, when it was contended by the defendant that the charges were within the Apothecaries' Act, (55 Geo. 3, c. 194, s. 14,) and that the plaintiff must shew that he was an apothecary; but for the plaintiff it was urged that they were merely chemist's charges, and therefore that they came within the exception made in favor of chemists by the 28th section of the statute. The secondary left it to the jury to say whether the plaintiff had charged as an apothecary or a chemist, and the jury found for the plaintiff.

M. Chambers subsequently obtained a rule *nisi* for setting aside the verdict, and for a new trial, on the ground of misdirection, against which

Fry now shewed cause.—The direction was right, because it was for the jury to say in what character the plaintiff had professed to act.

Chambers.—The real question for the jury was, how the plaintiff had acted, for he might have really acted as an apothecary though he professed to act and charged as a chemist. *Morgan v. Rudduck*, 4 D. P. C. 311; *Lane v. Glenny*, 4 Nev. & P. 258; *Sherwood v. Way*, 5 Ad. & El. 383, were cited.

Williams, J.—I think this was a misdirection, and the rule must be absolute.

Rule absolute.—*Richmond v. Coles*, H. T. 1842. Q. B. P. C.

JUDGMENT AGAINST THE CASUAL EJECTOR.

The Court granted a rule nisi for judgment against the casual ejector, where it was sworn that service had been effected upon the mother-in-law of the tenant on the premises; the wife of the tenant having since admitted that the papers had been handed to her.

Dickenson moved for judgment against the casual ejector. Service had been effected on the mother-in-law of the tenant, on the premises; and the wife of the tenant subsequently acknowledged that the declaration and notice had been handed to her.

Williams, J.—Take a rule nisi.

Rule nisi granted.—*Doe dem. Morgan v. Roe*. H. T. 1842. Q. B. P. C.

SETTING ASIDE FRIVOLOUS DEMURRER:—
FORM OF RULE.

Where it is sought to set aside a demurrer to a replication, on the ground that it is frivolous, the rule must be drawn up on reading the replication.

A rule had been obtained by *Warren*, for setting aside a demurrer to the replication as frivolous, against which

J. Jervis now shewed cause. He objected that the rule was informal. It was drawn up on reading the demurrer, and an affidavit shewing that it was in this cause, but it was impossible for the Court to form any opinion upon the frivolousness of this pleading, without the replication being brought before it.

Warren, contra.

Williams, J.—The Court cannot judge whether the demurrer is frivolous, unless the replication is before it. The rule should have been drawn up on reading the replication.

Rule discharged, without costs.—*Daniel v. Lewis*, H. T. 1842. Q. B. P. C.

AFFIDAVIT.—JURAT.—BEFORE WHOM SWORN.

The Court of Queen's Bench will not permit an affidavit, sworn before a commissioner of the Court of Exchequer, to be used in a matter pending in the Queen's Bench.

In this case a rule nisi had been obtained for setting aside a writ of *steri facias*, upon the ground that it had been issued against good faith.

Addison shewed cause, and objected to the affidavits on which the rule had been obtained. From the jurat, they appeared to have been sworn before a commissioner of the Court of Exchequer, and on that ground the Court would not permit them to be used. The jurat must be taken to be a material part of the affidavit, and as establishing this fact. *Houlden v. Fauson*, 6 Bing. 236.

Pashley, in support of the rule.—The affidavits were entitled in this Court, and if the description of the commissioners was rejected,

which it might be, they would appear to have been regularly sworn.

Patteson, J.—A commissioner of the Court of Exchequer has no right to take affidavits respecting matters pending in this Court. These affidavits appear to have been sworn before such a commissioner, although they are entitled in this Court. I entertain no doubt upon the subject, and this being clearly an irregularity, the rule must be discharged with costs.

Rule discharged.—*Shaw v. Perkins*, M. T. 1841. Q. B. P. C.

SERVICE IN EJECTMENT.—SERVICE ON SON.—
ACKNOWLEDGMENT.

Where a tenant in possession intimates that a service on the son on the premises, has come to his knowledge, it is sufficient for a rule nisi for judgment against the casual ejector.

This was an action of ejectment. The deponent who stated that service had been effected, deposed to these facts: that he had gone to the premises sought to be recovered; that the tenant in possession was not there; that he had seen the son, and on the premises had served him with the declaration in the usual manner, and with the usual explanation. On returning from effecting this service, the deponent met the tenant in possession, and informed him of what he had done. The tenant then said "I have no time to lose."

Atherton now moved for judgment against the casual ejector, and submitted that the service disclosed by the affidavit was sufficient for a rule nisi.

Patteson, J., granted a rule nisi for judgment against the casual ejector.

Rule granted.—*Doe dem. Brickfield v. Roe*, M. T. 1841. Q. B. P. C.

Common Pleas.

REFERENCE.—COSTS.—JUDGMENT.

A cause being referred upon the terms that the costs of the cause should abide the award of the award, and the costs of the reference be in the discretion of the arbitrator, and an award having been made in favour of the plaintiff, the defendant being ordered to pay the costs of the reference, the plaintiff's entire claim for costs was taxed by the master, and an allocatur made on the 4th June, comprising the amounts of the costs of the cause and of the reference, and judgment was signed for both sums on the same day; the plaintiff subsequently died on the 18th November, and a sci. fa. was sued out on the 12th January, to which the defendant pleaded on the 19th: Held, that on the 24th it was incompetent to the defendant to object to the alleged falsity of the judgment, on the ground of its including not only the costs of the cause, but of the reference also.

This was a rule calling upon the plaintiff, or the person claiming under him, to shew cause why the final judgment should not be set aside,

and why the defendant should not be paid the costs of the motion. It was an action brought to recover the sum of 524*l.* upon two bills of exchange; and also a sum of 5,999*l.* alleged to be due upon a general account: and the cause having come on for trial on the 9th February, 1839, it was agreed between the parties that it should be referred to arbitration, the costs of the cause to abide the event of the award, and the costs of the reference to be in the discretion of the arbitrator. The award was made on the 8th January, 1841, and the defendant was awarded to pay to the plaintiff the sum of 2,736*l.*, together with the costs of the reference, and of the cause. On the 29th April, 1841, the plaintiff signed judgment. On the 4th June, the costs were taxed at 932*l.*, and the Master made his *allocatur* for that amount; and on the same day the judgment was registered, in accordance with the terms of the award, and of the *allocatur*. On the 18th November, 1841, the plaintiff died; on the 12th January, 1842, a *scire facias* was sued out, which was served on the 13th; and on the 19th the defendant pleaded that the judgment had been obtained by fraud and covin; on the 24th the present rule had been obtained, upon the ground that the Master had included in his *allocatur*, and the plaintiff had included in his judgment, not only the costs of the cause, which amounted to 474*l.* 10*s.*, but the costs of the reference, also 457*l.* 10*s.* in amount, and that as to the latter sum, the plaintiff was not entitled to a judgment, but should have obtained an attachment.

Mr. Serjt. Atcherley, and Serjt. Channell, now shewed cause against the rule; and contended first, that it asked too much in seeking to set aside the whole judgment, which at all events was good to a certain extent, and that the motion should have been to set aside the Master's *allocatur*, or to reduce the amount of the judgment; and secondly, that the defendant had waived the objection, having taken a step in the cause by pleading to the *scire facias*. Had the motion been to set aside the *allocatur*, the answer would have been twofold, first, that it was too late; and secondly, that no objection had been made before the Master to the two sums being included in the *allocatur*, and that it might well be supposed, there being nothing shewn to the contrary, that the whole of the costs had been incurred in respect of the cause. With regard to the waiver, the objection amounted to a mere ground of irregularity which had been waived. *Sloman v. Gregory*, 1 D. & Ry. 181.

Mr. Serjt. Munning and Mr. Serjt. Shee, in support of the rule. The costs of the reference ought not to have been included in the judgment, but could only be recovered by a proceeding upon the award by attachment or otherwise. There had been no waiver of the objection by the parties assenting to the two sums being included in one *allocatur*, for it would have been useless to have had two *allocatures*; it was the plaintiff's duty, however, to sign judgment only for so much as he was entitled to recover in the cause, and to have separated the

costs of the reference from those applying to the action. The objection was not to the regularity of the judgment, but its falsity, which could not be got rid of by any acquiescence or waiver of the defendant.

Tindal, C. J.—The objection resolves itself into a point of irregularity, and is capable of receiving two answers; first, that the proceeding was with the consent of the parties; secondly, the lapse of time which has been permitted to take place. The parties go before the Master, and the plaintiff having furnished the bill, including the costs both of the action and of the award, no objection is made on the part of the defendant, but he allows the bill to be taxed, and they go on agreeing to a given sum, for which the *allocatur* is made. The defendant's attorney might have said, this is an irregular course to take, and two *allocatures* ought to be made; but I can see a very good reason why he did not, because it would have been nearly throwing money away, for, since the recent act, if the second *allocatur* had been made a rule of Court, it would have had the effect of a judgment (1 & 2 Vic. c. 110, s. 18.) See how unjust it would be to the plaintiff, if the defendant were permitted now, after a lapse of more than six months, to come and object to this judgment. If the objection had been made sooner, and the judgment had been found to be good, it would have operated as a charge upon the land of the defendant, (1 & 2 Vic. c. 110, s. 13) which he may now have parted with. The judgment could not be signed for any sum, but that for which the *allocatur* was made. The defendant lets seven days of Michaelmas Term, and thirteen days of this Term go by without any objection, but then a *sci. fa.* being sued out, he pleads a plea which he cannot say is a just one, and then comes to the Court. I think, under all the circumstances, that the rule must be discharged with costs.

Rule discharged.—*Bignall v. Gule*, H. T. 1842. C. P.

BILLS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

BILLS IN PROGRESS.

For transferring the hearing and determining of certain Appeals from her Majesty in Council to the House of Lords.

[For 2d reading.]

Lord Campbell.

For making better provision for hearing Appeals and Writs of Error in the House of Lords.

Lord Campbell.

[For 2d reading.]

For the better Administration of Justice in the High Court of Chancery.

[For 2d reading.]

Lord Campbell.

For establishing Local Courts.

[For 2d reading.]

Lord Brougham.

For the Amendment of the Law relating to Bankrupts, and the better Advancement of Justice in certain Matters relating to Creditors and Debtors. Lord Cottenham.

[For 2d reading.]

To improve the Practice and extend the Jurisdiction of County Courts.

[For 2d reading.] Lord Cottenham.

To enable the Lord Chancellor to direct certain Proceedings in Bankruptcy, Insolvency, and Lunacy to be carried to the County Courts. Lord Cottenham.

[For 2d reading.]

For the better administration of Justice in the execution of Commissions of Lunacy.

[For 2d reading.] The Lord Chancellor.

To enable Baptists to make affirmations, instead of oaths. Lord Denman.

[For 2d reading.]

For the amendment of the Law of Bankruptcy.

[For 2d reading.] The Lord Chancellor.

For enabling Ecclesiastical Corporations to grant Leases. The Bishop of London.

[In Committee.]

For enabling Incumbents of Benefices to grant Leases. The Bishop of London.

[In Committee.]

For improving the Law of Evidence.

[In Committee.] Lord Denman.

To amend the laws relating to Loan Societies.

[Passed.]

For the Regulation of Apprentices.

[Passed.]

House of Commons.

NOTICES OF BILLS.

To allow Writs of Error on Mandamus.

The Attorney General.

To alter the Law as to Double Costs, and other matters. The Attorney General.

To amend the Law of Marriage.

Lord F. Egerton.

For the bill 100

Against it 123

For the more effectual inspection of Houses, licensed at Quarter Sessions for the Insane.

Lord G. Somerset.

BILLS IN PROGRESS.

To regulate the Sale of Parish Property.

[For 2d reading.] Sir E. Knatchbull.

To amend the Law of Copyright.

[In Committee.] Lord Mahon.

For Registering Copyrights and Assignments, and better securing the property therein.

[In Committee.] Mr. Godson.

For the Regulation of Buildings.

[In Committee.] Mr. F. Maule.

For the Improvement of certain Boroughs.

[In Committee.] Mr. F. Maule.

Municipal Corporations. [In Committee.]

To consolidate the Queen's Bench, Fleet, and Marshalsea Prisons. Sir J. Graham.

[For 3d reading.]

Small Debt Courts Bills for

Barnsley,

Leicester, (jurisdiction 15*l*.)

Honiton.

Kingswinford,

Liverpool.

Attorney's Certificate Duty.

The Attorneys and Solicitors of Ireland have presented a petition for the repeal of this tax.

THE EDITOR'S LETTER BOX.

We apprehend that we cannot insert some of the cases that have been sent, and which may be readily answered by a little research.

"One of our Readers" is informed that the attorney to whom he is articulated, is of course, the only person to execute the assignment, but the London agent, as well as the attorney in the country, must answer the questions as to the time served with each. The assignment cannot be compelled, because there is not such "plenty to do and see" in the attorney's office as will satisfy the clerk.

We think "Iota" must conform to the regulations. The fees are nearly 40*l*., besides 100*l*. to be deposited.

The articles of clerkship being dated the 17th day of November, 1837, *B*, can be examined in Michaelmas Term 1842, without any special application.

We shall be glad to receive the proposed letters from "Scalae."

There does not appear to be any restriction in the statutes or rules of Court against an articulated clerk's carrying on business after the expiration of his articles. The Court or the Examiners will consider the nature of the business, and exercise a due discretion as to the party's examination and admission.

The candidate need not answer the conveyancing questions. He is required to answer in Common Law and Equity, and one of the other three branches.

By the 9 Geo. 4 Cap. 40, s. 36, Justices of the peace are required to issue their warrants to the overseers of the poor of the parishes in their jurisdiction, "*to return lists of all insane persons chargeable to their respective parishes,*" and on the receipt of such warrants, the overseers are to prepare such lists. "Such lists to be verified on oath;" and a penalty of 10*l*. is imposed on overseers not returning such lists so verified on oath. The overseers of certain parishes state, they have no lunatics within that parish, and refuse to make any return. If an overseer is inclined to conceal having a lunatic pauper, he is not put on his oath, and the only remedy there is against him, is by fining him under the 37th section. A correspondent inquires whether an overseer is bound to make a return on oath as to there being any lunatics chargeable to his parish or not, and not simply to return a list of lunatics. Is any of our readers acquainted with a case on this point?

The letters of "a Constant Reader;" R. H. T.; and "a London Solicitor," have been received.

The Legal Observer.

SATURDAY, MARCH 26, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LORD CHANCELLOR'S BANKRUPT LAWS AMENDMENT BILL.

THE Lord Chancellor's Bill "for the Amendment of the Law of Bankruptcy," has just been printed. It differs from that of Lord Cottenham, in increasing the number of Commissioners of the Court of Bankruptcy for the purpose of executing fiats in the country, instead of transferring them to the intended Judges of *County Courts*.

Amongst other alterations, the present Bill proposes to dispense with the petitioning creditor's bond, and to send the fiat direct to the Court of Bankruptcy. It provides for the arrest of the alleged bankrupt on proof of probable cause that he will leave the country. No person is to be made bankrupt on any act committed more than twelve months before the fiat. The petitioning creditor's debt is required to be 50*l.* only, or where there are two creditors, not partners, 75*l.*; or in case of three or more creditors, 100*l.*

In lieu of Lord Cottenham's more comprehensive proposal, the persons to be rendered liable, in addition to the former traders are: livery stable keepers, coach proprietors, carriers, ship owners, auctioneers, apothecaries, market gardeners, cow-keepers, brick-makers, alum-makers, limeburners, and millers.*

The trader may be summoned before the Court of Bankruptcy, and if he does not appear, or does not within twenty-one days give security for the debt, he shall be

deemed to have committed an act of bankruptcy.

Persons adjudged bankrupt are to have notice before the adjudication is advertised, and be allowed five days to contest the fiat. If twenty-one days elapse after the adjudication has been gazetted, (the bankrupt being in this country) or three months, if in Europe, or twelve months elsewhere, the Gazette will be conclusive evidence against him.

The mode of obtaining the certificate is thus prescribed: The Court is to appoint a public sitting, at which any creditors may be heard against the allowance of the certificate. The Court is to judge of the objections, and refuse or suspend the allowance, as the case may require.

Then comes the important provision that the Lord Chancellor may appoint *additional Commissioners* of the Court of Bankruptcy, to act in the prosecution of fiats *in the country*; such Commissioners to be serjeants at law, or barristers of seven years' standing, and additional deputy registrars may also be appointed.

Fiats may be directed to one of the Courts authorised by the act for the prosecution of fiats in the country, and bankruptcies now depending are to be removed to such Courts; and the travelling expenses of the Commissioners are to be paid out of the Bankruptcy Fund Account.

It thus seems that the Lord Chancellor does not intend to have local resident Judges or Commissioners, but to send them on Circuit from the Court of Bankruptcy, and the London Commissioners are empowered to make general rules and orders, subject to the Lord Chancellor's approval.

* The late Lord Chancellor proposed to include attorneys, surgeons, school-masters, graziers, and farmers.

The office of Chief Judge of the Court of Bankruptcy, and the office of one of the Judges, (Sir George Rose) now held by a Master in Chancery, are to be abolished. And the Court of Review is to be formed of one Judge only.

The Lord Chancellor is also empowered to appoint an officer, to be called the Master, to tax all bills of costs; subject to review by the Commissioners in Bankruptcy. The bills of auctioneers, accountants, &c. are also to be settled by the Master. He is to be a barrister or solicitor of five years' standing.

Then thirty official assignees are to be appointed for the purpose of conducting the country bankruptcy business in the manner adopted in London.

The clauses in Lord Cottenham's Bill, providing for the voluntary cession of property by an insolvent and for compulsory cession at the instance of the creditors, are not in the present bill; neither is the provision for doing away with arrest on final process, except by the order of a Judge.

THE PROPERTY LAWYER.

OFFICIAL SALARY.

WE very recently stated the principal cases relating to the assignability of official salaries, and among other conclusions to which we came from them, was one, that "a compensation granted to a public civil officer on the reduction of offices under the stat. 4 & 5 W. 4, c. 24, is not assignable." This was so held in *Wells v. Foster*, 8 M. & W. 149, by the Court of Exchequer. A contrary doctrine, however, has been maintained by the Vice Chancellor of England in a recent case. The Commissioners of Customs by the direction of the Lords of the Treasury, granted to A. as a compensation for the loss of an office which he had held in the Custom House, 500*l.* a-year, payable quarterly by the Receiver General of Customs. A. assigned the allowance to B. for a valuable consideration, and subsequently took the benefit of the Insolvent Debtors' Act. Sir L. Shadwell, in a suit by B. against A. and the assignees of his estate, but to which neither the Lords of the Treasury nor the Commissioners of Customs were parties, restrained the Receiver General from paying over to the defendant monies in his hands on account of the arrears of the allowance, unless the Lords of the Treasury or the Commissioners of Customs should order the contrary. "I

have to observe," said his Honor, "that this Court has given full effect to an assignment of even military full pay, with respect to money which was actually in the hands of the agent for the party who had made the assignment, for in *Spencer v. Cox and Drummond*, 2 Anst. 535, n., an officer in the army had assigned his pay to the plaintiff to secure an annuity, and had given notice to the defendants, the agents of his regiment, to pay it over to the plaintiff. The officer being abroad on service, the plaintiff demanded payment of the arrears of the annuity from the defendants, and on their refusing he filed his bill. The defendants proved that officers in the army were at liberty to take up their pay from the regimental paymaster, and that the agent was answerable over to him. The Vice Chancellor, however, decreed that the defendants should pay the money in their hands in discharge of the arrears of the annuity, and should discharge the growing payments of it out of such monies as they should receive on account of the assignor. But the Lord Chancellor varied the decree by ordering the defendants to discharge the annuity out of what should remain in their hands, after satisfying the demands of the paymaster; so that the Court gave the assignee the benefit of his lien with respect to the balance of the monies in the hands of the agents." Sir L. Shadwell, accordingly made an order in the terms we have mentioned, which was affirmed by the Lord Chancellor (Cottenham), his Lordship relying particularly on the injunction being confined to the sums in the Receiver General's hands. *Tunstall v. Boothby*, 10 Sim. 542.

MASTER DAX'S LETTER TO THE LORD CHANCELLOR ON LAW REFORM.

WE lately submitted to our readers the plan of Law Reform proposed by Mr. Dax, one of the Masters of the Court of Exchequer; (see p. 384, *ante*;) and we now proceed to make some remarks on his suggestions. Amongst so many projects, it is difficult to select one which shall meet all points of the case; on the one hand conceding whatever may be safe to the advocates of change; and on the other, protecting the due administration of justice.

The letter to the Lord Chancellor is evidently written by a gentleman perfectly conversant with the subjects on which he treats, and he has taken a very compre-

hensive view of them. Although each of the topics of reform embraced in Mr. Dax's letter requires and deserves separate consideration, yet we think they have been properly brought under one view, because the suggestion of adding another Judge to each Court, could only be borne out by shewing the necessity thereof, and the additional duties required to be performed.

We have particularly to call the attention of our readers to Mr. Dax's suggestions by way of substitute for the scheme of Local Courts. We think that in whatever way such Courts are constituted, they will not answer the expectations of their supporters, but, on the contrary, will be productive of great mischief to the community. The decisions of such Courts are not likely to be satisfactory, and in the end the public will find it better to pay a little more for the decision of their rights by competent Judges. If, however, inferior Courts are to be established, there ought certainly, in justice, to be an appeal to the superior Courts. We entirely approve of Mr. Dax's suggestion that the *inferior* should be controlled by the *superior* jurisdiction, and we trust it will be taken up by persons in authority.

We agree also with the author of the letter, that if his suggestion of appointing additional Judges, and having a separate Court for the decision of actions to a limited amount, were carried out, it would of itself render Local Courts entirely unnecessary; and we think that if all actions originated by writ of summons in the superior Courts, power should be given to the Judges in case of *disputed accounts*, or other questions of minute detail, to send such matters before the Masters for investigation. This would be a great saving to suitors, and we think would be perfectly satisfactory, more particularly as the Courts would always have controul over their officers, and their decisions, when necessary, would be reviewed.

It may be appropriate here to observe that under the present system it is a subject of remark amongst the profession, that the way in which business is hurried over at the Judge's Chambers, is very unsatisfactory. The fault is not with the Judges, for they have not time properly to consider the matters before them, and particularly on the eve of the assizes; and in term time, one Judge from each Court is obliged to hurry from Westminster Hall to Serjeants' Inn to attend Chambers, and hear hundreds of persons within a few hours! How is it possible to do this satisfactorily? Now,

additional Judges would prevent this pressure, and it would be much better if the Masters were to attend the Chambers in rotation, and hear parties on summonses in *ordinary matters*—leaving the Judges to decide matters of importance.

We think the practitioners are much indebted to Mr. Dax for devoting his time to the consideration of these important subjects, and giving the result of his extensive knowledge and practical experience.

THE INCOME TAX AND CERTIFICATE DUTY.

WE, last week, stated our views concerning the income tax, so far as it concerns the profession, and particularly that large branch of it composed of attorneys and solicitors. We find that the Incorporated Law Society prepared a Petition to the House, which was presented by Sir Thomas Wilde, setting forth the taxes already imposed on attorneys, solicitors and proctors, which are not paid by the members of any other profession. The Petition is as follows:—

To the Honourable the Commons of the United Kingdom of Great Britain and Ireland, in Parliament assembled.

The humble Petition of the Society of Attorneys, Solicitors, Proctors and others, not being Barristers, practising in the Courts of Law and Equity of the United Kingdom, incorporated by charter of King William the Fourth:—

Sheweth, That your petitioners are not only liable in common with their fellow subjects to the indirect taxes upon articles of consumption, and to the assessed and other ordinary taxes, but also to fiscal burdens peculiar to their profession (that is to say) to stamps upon articles of clerkship and admissions to practice, and to a direct annual payment to government for the stamps upon their certificates of practice.

That the average revenue paid to government in the ten years ending 1836, for stamps upon articles of clerkship to attornies, solicitors and proctors, and upon admissions to practice, exceeds the sum of 78,000*l.* per annum.

That the payment upon certificates of attornies, solicitors and proctors, exceeds the sum of 85,000*l.* per annum.

That no one of the other professions is chargeable with similar stamp duties.

That though your petitioners do not express any opinion upon the general policy of an income tax, they do humbly submit that attorneys, solicitors and proctors, should not be subjected to an impost on their income, which, with the stamps upon their annual certificates,

would, in effect, make them liable to a tax of double the amount payable by individuals in other professions, should the present measure be passed into a law.

Your petitioners therefore most humbly pray, that your honourable House, in case it shall think fit to impose a tax upon incomes, will introduce such provisions for the protection and relief of your petitioners as your honourable House may deem just and proper.

On this subject, we have received the following letter :

I yield to none, save those who may better understand, and so appreciate more fully, the depths of political economy, in admiration of the Premier's bold and manly method of meeting the exigencies of the state. None more cordially agree with his masterly exposition of the dire necessity if not of an income at least a property tax, with which to relieve its fiscal embarrassments, and I venture to affirm that none would more cheerfully bear the vexation of such taxation if fairly and equally imposed upon all—but "that is the question."

It is not my intention to discuss the point of equity raised by an ex-Chancellor, whether the income derived from uncertain personal industry should be put on the same footing as that flowing smoothly in from certain and stable property, nor shall I now consider the fairness and expediency of applying the principle of the "sliding scale" to the present case, or whether the rate should be levied on the *over-plus* of 150*l.*, or on the *total* income. But I beg to draw attention to the fact, that of all classes of her Majesty's loyal subjects, the lawyers alone have been burthened during twenty-six years of peace with a heavy *direct* and unmitigated *war* tax; all others have enjoyed the full privileges of peace; we only have been selected to continue our extraordinary contributions, and pour into the coffers of the state our poll tax of 12*l.* or 8*l.* each, a year, (not to mention other professional duties) imposed for the services of wars long since happily ceased, such being indeed no other than a *fixed income tax* upon the profession. I submit, therefore, that in consideration of our past payments (no slight matter), and our present willingness to submit to their continuance for so long a time as the proposed measure shall be in force, the legal profession shall be wholly exempt from the operation of any further tax upon their incomes. Surely I need not argue its equity, the bare statement of the above facts must carry conviction: its justice is palpable. If the income of all classes must be taxed, let them contribute equally, and that equality be in truth, and not merely in fiction and form—"fair play is a jewel."

Or, should not this be considered an equal adjustment, which, if it be not is at least an equitable one, put us then upon the very same footing with other men; abolish the certificate duty at once; let the whole kingdom be started fairly together from this time forth. We will then ask no favour on account of our extra

burthens already borne, but cheerfully bear a tax upon our incomes in common with our neighbours, so that it be in truth and reality *equally* shared by all.

LEGALIS.

Wolverhampton.

[The latter proposition is the right one; the certificate duty should be taken off.]—ED.

SUGGESTED IMPROVEMENTS IN THE LAW.

SAFE CUSTODY OF WILLS.

WE have received the following proposed Bill from a country solicitor, for the purpose of providing for the Safe Custody of Wills, *during the lives of the parties making the same.*

1. That it shall be lawful for her Majesty, her heirs and successors, to provide a proper office in London or Westminster, to be called "The Wills General Depository," and by warrant under the royal sign manual, to appoint for the said depository a keeper general of wills, and from time to time, at pleasure, to remove the said keeper general, and to appoint some other person in his room.

2. That it shall be lawful for the said keeper general, subject to the approval of the Lord Treasurer, or Lords Commissioners of her Majesty's Treasury, or any three of them, from time to time, to appoint such deputy keepers, clerks, and servants as he shall deem necessary to carry on the business of the said depository, and at pleasure, subject to such approbation, to remove them or any of them.

3. That the said Lord Treasurer, Lords Commissioners, or any three of them, shall fix the salary of the keeper general, so that the same shall not at any time exceed the sum of 1000*l.* yearly, and shall also fix the salaries of the deputy keepers, clerks, and servants, in fit proportion, according to the duties they may have to perform.

4. That the salaries of the keeper general, deputy keepers, clerks, and servants, and all expenses of carrying on the business of the said depository, not herein otherwise provided for, shall be paid by the said Lord Treasurer, or Lord Commissioners, out of the consolidated fund of the United Kingdom of Great Britain and Ireland.

5. *A seal to be provided. Proper books of entry, and index to be provided. Mode of entry.*—That the said keeper general shall cause to be made a seal of the said depository, and shall cause to be sealed or stamped therewith, all rules, orders, and regulations, made by him in pursuance of this act; and all such rules, orders, and regulations, or copies thereof, purporting to be sealed or stamped with the said seal, shall be received as evidence of the same respectively, without any further proof thereof, and no such rule, order, or regulation, or copy

thereof, shall be valid, or have any force or effect, unless the same shall be so sealed or stamped as aforesaid. And that the said keeper general shall also cause to be printed and provided for and on account of the said depository, a sufficient number of books for making entries of all wills deposited therein, according to the form of schedule (A,) to this act annexed, and for making an index to such entries, according to the form of schedule (B,) to this act annexed; and the said books shall be of durable materials, and that each of such books of entry shall be marked on the outside with a distinguishing letter or other mark, and shall have printed at the top of each side of every leaf thereof the form of the said schedule (A); and that every page of each of such books of entry shall be numbered progressively, from the beginning to the end: beginning with number one; and that each entry shall be numbered progressively, from the beginning to the end of the book, beginning with number one; and that every entry shall be divided from the following entry by a red ink line. Provided always, and be it further enacted, that there shall be a sufficient number of index books for each letter in the alphabet, marked with such letter on the outside; and that each of such books shall have printed at the top of each side of every leaf thereof, the form of the said schedule (B,) and that the entry of every deposit shall be indexed in one of the index books, marked with the initial letter of the surname of the person whose will is deposited; and that in such index books the surname shall be placed before the christian name or names.

6. *The Keeper General may make rules.*—That it shall be lawful for the keeper general for the time being, with the approbation of one of her Majesty's principal Secretaries of State, from time to time to make such rules, orders, and regulations, for the management of the said depository, for keeping the books of entry, and index for searching the said books of entry: and index for the receipt, inspection, or perusal of any will deposited at the said depository, for the identity of persons depositing wills; and for the duties of the keeper general, deputy keepers, clerks, and servants of the said depository, so that they be not contrary to the provisions herein contained, and that such rules, orders, or regulations so made and approved of, and sealed or stamped with the seal of the said depository, shall be binding on the keeper general, deputy keepers, clerks, and servants of the said depository, and also upon every person desirous of searching the books of entry or index, or of receiving, inspecting, or perusing any will deposited at the said depository.

7. *All wills made after the commencement of this act to be deposited at the depository. Keeper General not to break open any envelope.*—That every person domiciled in England or Wales, who shall make his will on or after the commencement of this act, shall cause the same to be enclosed and sealed up in an envelope, and endorsed according to the form of schedule

(C), to this act annexed, and such envelope to be enclosed in another envelope, sealed up and addressed to "The Keeper General of Wills," "The Wills General Depository, London," and left at the said depository, or sent thereto, through the general post office. Provided, always, that such envelope shall be so left or put into the post office, on the day of the date of the will therein contained, or before the depository or letter box of such post office be closed, on the day after the day of the date of such will; and that the postage thereof shall be paid at the time of posting, and that there shall be paid or sent with every will left or sent at or to the said depository the sum of 5s.; and that if any envelope purporting to contain any will, shall be received at the said depository, without the said sum of 5s., or which shall not have been properly endorsed, or shall not have been left or posted in proper time, or on which the postage shall not have been previously paid, it shall be lawful for the keeper general to cause the same forthwith to be returned through the general post office, to the person making or sending such will. Provided that it shall not be lawful for the said keeper general, deputy keepers, clerks, or servants, or for any or either of them to give or cause any information to be given (except as hereinafter mentioned) to any person whomsoever, of any will deposited at the said depository, or to break the seal of or otherwise open or undo the envelope of any will received thereat, except such as shall be addressed to the keeper general, or in any manner to injure or destroy the same, or to inspect, peruse, or destroy, or in any manner injure any will deposited at the said depository.

8. That immediately on the receipt of any will at the said depository, according to the provisions of this act, the envelope containing the same shall be sealed up with the seal of the said depository, and be endorsed with the date of its reception, and be deposited in some secure and fire-proof place in the said depository; and an entry of such deposit shall be inserted in the proper book of entry, and such entry indexed in the proper index book, according to the provisions of this act, and a notice sent to the maker or sender of the will, of the same having been received and deposited. Provided always, that to every entry of a deposit a reference be made to all prior deposits by the same persons.

9. *On production of certificate of death, will to be sent to the Registrar of the Court in which it is to be proved.*—That on the production at the said depository of a proper and legal certificate of the death of a person, and on the party producing the same, complying with such rules, orders, or regulations, as may have been made by the keeper general, under the provisions of this act; or on the keeper general being served with a Judge's order; or of a writ of mandamus, every envelope containing any will of such deceased person shall be immediately sent from the said depository, through the general post office, under cover, sealed with the seal of the said depository, to

the Registrar of the Court in which such will is to be deposited.

10. *Duty of Registrar on receiving a will.*—That the said Registrar shall immediately on the receipt of an envelope from the depository, cause the same to be opened, and the date of his receipt thereof to be endorsed on each sheet of the will therein contained; and a fair and literal copy of such will, and of every codicil thereto, or if there shall be more than one will of the same person there, of his then last will, and of every codicil thereto, to be made and forwarded under cover through the general post office to the executor of such will, or if more than one, then to one of the executors; and shall at the same time cause a written notice to be sent in the same manner to the executor, or if more than one, then to each of the executors of the said will, requiring the same to be proved in the proper Ecclesiastical Court, on or before a day to be named in such notice, such day not to be less than fourteen days from the day of posting such notice. Provided always, and be it further enacted, that such registrar shall (in case there shall be no living executor, or in case such will shall not be duly proved on or before the day fixed by such notice,) take the proper and necessary measures for obtaining proper and legal probate of the same. Provided, nevertheless, that no person shall be obliged to prove any will which by law may not be required to be proved.

11. That the person proving a will shall pay the postage thereof, from the keeper general to the registrar, and also the postage of the copy and notice from the registrar, and also the postage of all communications whatsoever relating to the said will; and shall also either return the copy uninjured and undefaced to the registrar, or pay him for the same at the rate of 8d. for every 72 words thereof.

12. *Power to search books.*—That it shall be lawful for any person to search any book of entry or index, on the payment of one shilling for every name searched for, and on producing and leaving at the depository a proper and legal certificate of the death of the person for whose will he wants to search, and on complying with such orders, rules, and regulations as may have been made by the keeper general under the provisions of this act.

13. *Power to a Judge to order search.*—That in case such person shall not be able to produce such certificate, or to comply with such regulations, it shall be lawful for him to serve the keeper general with a summons from a Judge or Baron of one of her Majesty's Superior Courts of Record, requiring him to attend before such Judge or Baron, or one other of the Judges or Barons of one of the said Courts, at his chambers, at the time to be named in such summons. Such summons to be served not less than twenty-four hours before the time of hearing; and that it shall be lawful for such Judge or Baron on due proof of the service of such summons, and on hearing such person; and the keeper general, or such of them as may attend before him, their attor-

neys, solicitors, or agents; and on reading such affidavits as may be produced, or as he may require to be produced before him, either to dismiss such summons or to make an order for the keeper general to allow such summons, or to make an order for the keeper general to allow such person to make the search required, or to make such other order as he may think proper.

14. *Mandamus.*—That it shall be lawful for such person in case the said Judge or Baron shall dismiss the summons, to apply to her Majesty's Court of Queen's Bench, where-soever the said Court may then be, for her Majesty's writ of mandamus, such mandamus to be peremptory in the first instance, commanding the keeper general to permit such search to be made. And that it shall be lawful for such Court, if it shall think proper, either to grant or refuse such mandamus. Provided, that no such mandamus shall be applied for, until after the keeper general shall have been served with a written notice of the intention to make such application twenty-four hours before the time of making the same; and that no mandamus shall be granted without the production of an affidavit of the due service of such notice of the hearing by such Judge or Baron, and of his having dismissed the summons.

15. Mode of service on the keeper general.

16. Persons applying to pay costs.

17. How affidavits to be intitled.

18. Application of money received by the keeper general.

19. Commencement of act. Exceptions to the application of the act.

20. Power to depositors to open envelopes, and to peruse wills and take them out of the depository.

21. Penalties.

22. Mode of recovering penalties. Application of penalties.

23. Extension of act.

24. Wills made before the commencement of act may be deposited before 1st January, 1844.

EXECUTORS' POWERS UNDER AN IMPLIED CHARGE OF DEBTS UPON REAL ESTATE.

It is well known, that at no very distant period the English law gave the simple contract creditor no means of obtaining satisfaction of his debt out of the real estate of his deceased debtor. In this respect, we differed with nearly every other system of jurisprudence prevailing amongst civilized communities. The old Roman law, made the inheritance of the deceased debtor chargeable in the hands of the heir, with the whole amount of the ancestors' debts; and most of the modern states of Europe, which adopted the general principles of that code, laid down a similar rule. In the United States also, as well as in the northern part of our own island, the just claims of all

classes of creditors have been fully recognized from an early period. The exertions which were made session after session by Sir Samuel Romilly, to introduce this same principle in our own law, have secured for him a lasting debt of gratitude. That learned and eminent individual, could only prevail on the legislature to make freehold estates assets for the payment of simple contract debts, in cases where the debtor was, at the time of his death, a trader within the meaning of the bankrupt laws, and it was left to future times, for parliament to pass a general enactment for subjecting freehold and copyhold property, to the payment of debts, as well simple contract, as specialty.

But though the legislature for so long a period evinced a determination to refuse this measure of justice, our Courts greatly alleviated the evil consequences which would have resulted, by their astuteness in discovering intentions on the part of testators, to make their debts charges upon their landed property, and Courts of Equity, in particular, have established several doctrines, perhaps not quite consistent with the limits of a purely judicial authority, but which have been highly beneficial to creditors, and have probably in most cases been applied in furtherance of the real intentions of the deceased debtors.

The principles of construction and equitable doctrines, to which we allude, are in no degree affected by the acts which have been passed for facilitating the payment of simple contract debts. The 9th section of the 1 W. 4, c. 47, which is a re-enactment of Sir Samuel Romilly's act, and the more comprehensive act of the 3 & 4 W. 4, c. 104, are expressly made applicable to cases only where the debtor should not by will have charged his real estate with the payment of his debts; and in the case of *Mirchouse v. Sciffe*, 2 My. & Cr. 708, Lord Cottenham said, "I cannot feel justified in departing from the rules established in the cases which preceded the 3 & 4 W. 4, c. 104, on account of the very beneficial provisions of the act," and subsequently added "a charge by the will is not [misreported 'now,'] inoperative in consequence of that act."

In considering, therefore, the powers which the Courts, from a desire to give every facility for the satisfaction of just demands, have held to be impliedly given to executors, in order to make such charges available, it will not be necessary again to advert to the remedies now ceded by the legislature. It has been already noticed, that a very slight intimation of intention in the will of a man indebted, was considered as a testamentary provision for the payment of his debts out of his real estates, where the creditors would otherwise go unpaid; in *Kidney v. Constamker*, 1 Ves. junr., 440, Lord Thurlow said, "for subjecting land to debts, very little is sufficient. The Court has leaned that way, if we may be allowed to say so. Upon this principle, it has from an early period been a well established doctrine, that if a will commence with a direction, that all the testator's debts shall be paid, an intention is to be in-

ferred, that his real estates, whether specifically devised, or included in a general devise, or left to descend upon his heirs, shall be first applied in payment of those debts which his personal estate shall prove insufficient to pay. *Thomas v. Butnell*, 2 Ves. senr., 313; *Kightley v. Kightley*, 2 Ves. junr., 328; *Clifford v. Lewis*, 6 Mad. 33. This has been a rule of frequent and familiar occurrence, and has rarely been questioned, except when there were other parts of the will which were supposed to control the effect of the introductory words.* It was, however, lately questioned by many, first, whether such an implied charge gave the executors, without the assistance of a Court of Equity, power to sell the real estate; secondly, whether it authorized a mortgagee; and thirdly, whether the purchaser or mortgagee, would not be responsible for the propriety of the transaction, or be bound to see to the application of the money raised. In reference to these questions, Mr. Hayes, in the fourth edition of his book on Conveyancing, observed, p. 285, that not only have the executors as such no authority to sell or mortgage, but payment to them of the money received, would not discharge the purchaser or mortgagee. Sir Edward Sugden, would also seem to have been of a similar opinion, for in his *Treatise of Powers*, Vol. 1, pp. 133, &c., where he states the cases in which it had been held, that executors took a power of sale by implication, he merely shews, that when the will contains an express direction to sell, and not where this is left to presumption, that if the fund be distributable by the executor, he shall be the party to execute the power. In one of these cases, which is reported in the year book, it is laid down, that if a man make his will, that his land which his feoffees have, shall be sold, and does not say by whom, then his executors shall alien that and not the feoffee; because the money to arise by the sale shall be assets in their hands. 1 Sug. Pow. 133; 2 Ib. 538.

When the Court has once declared that the words of a will are sufficient to make the debts a charge upon the testator's landed property, it seems difficult to adduce any principle for holding, that this charge may not be made available by the simple method of a sale or mortgage: it surely can never be a testator's intention to put his creditors in the situation of mortgagees, or to make them permanent incumbrancers on the property. If, therefore, the powers in question are to be reasonably inferred from the creation of a charge, the cases cited by Sir E. Sugden, seem directly in point to shew, that the executor upon whom the duty devolves to pay the debts, is the proper party to exercise the power and give the receipts; and, from the above case in the year

* As to the effect of a specific charge in controlling a general charge by implication, see the somewhat conflicting decisions of Sir L. Shadwell, in *Graves v. Graves*, 8 Sim. 43; and of Lord Langdale, in *Palmer v. Graves*, 1 Keen 545.

book, it would appear, that the executor's exclusive authority was unaffected by a devise of the legal estate to another.

But whether the trustees and the executor could concurrently do this, without the institution of a suit for the administration of assets, was the principal question raised in the late case of *Shaw v. Borrer*,¹ Keen 559. In that case, the will commenced with a direction to pay debts, and then followed a devise of an advowson to trustees in trust, to present *R. W. S.* on the first vacancy, and subject thereto upon trust to sell and divide the proceeds amongst certain legatees. The trustees at the instance of the executors, before any vacancy, entered into a contract for the sale of the advowson to the defendant. Objections were made to the title, on the ground that the trustees had no other authority to sell, than that expressly given them by the will, and that the time designated by the testator for its execution had not yet arrived. A bill for specific performance was filed by the trustees and executors, and the masters having reported in favour of the title, the defendant took exceptions to the report. In support of the exceptions, it was said to be a point never yet determined in the Courts of Equity, whether executors, under the general charge upon the real estate for the payment of debts, were entitled to sell the real estate with the concurrence of the trustees, until a deficiency of the personal estate shall have been first ascertained in a suit for the administration of assets. The Master of the Rolls, while he considered there was no good reason to doubt, but that the trustees and executors may themselves do that which the Court would compel them to do on the application of the creditors, yet seemed to assent to the alleged novelty of the question. However, in a preceding part of his judgment, his lordship cited a case, *Elliot v. Merriman*,² Barnard 78, which was an express authority for the executor's right to sell. In that case, the then Master of the Rolls, after noticing that the lands were not given to be sold for the payment of debts, but were only charged with such payment, gave his opinion that that made no difference, and observed, that if such a distinction could be made, the consequence would be, that whenever lands were charged with the payment of debts generally, they could never be discharged, of that trust without a suit, which would be extremely inconvenient. Lord Langdale decided in conformity with this case, but he cited it in another part of his judgment, and for another purpose. The same question came subsequently on appeal before Lord Cottenham, in the case of *Ball v. Harris*,³ 4 Myl. & Cr. 264, in which his lordship expressed his entire concurrence with Lord Langdale's decision in *Shaw v. Borrer*, but denied the want of authority, for he observed, the point indeed has been long established. It arose directly in *Elliot v. Merriman*, and, as there laid down, has been recognized in the several cases referred to by the Master of the Rolls; to which may be added the opinions of Lord Thurlow and Lord Eldon,

in *Bailey v. Ekins*, and *Dolton v. Hewen*; for although the point in some of these cases was whether the purchaser was bound to see to the application of the purchase money, the decision that he was not, assumes that the sale was authorised by the charge in the will of the debts upon the estate; that is, that the charge of the debts upon the estate was equivalent to a trust to sell for the payment of them.

In *Ball v. Harris*, the transaction in dispute, was a mortgage made by the trustee by deposit, accompanied with a memorandum, signed by him, and the executor, declaring the money to have been advanced to the latter for the purpose of affecting the trust of the will. Lord Cottenham having first expressed his concurrence in the proposition, that a charge of debts implies a power to sell, addressed himself to the question whether the right to sell, authorized the mortgage, and, in deciding in the affirmative, used these words, "so long ago as the case of *Mills v. Banks*, in 1724, it seems to have been assumed as settled, that 'a power to sell implies a power to mortgage, which is a conditional sale,' and no case has been quoted, throwing any doubt upon that proposition." He subsequently continued, "it would indeed be most injurious to the owners of estates charged, if the trustee could effect the object of his trust only by selling the estate."^b

It has thus been adjudged clear, that whenever a will, either expressly or by implication, charges the real estates with the payment of debts, a sale or mortgage for that purpose may be effected by the executors, or by their direction, without the intervention of a Court of Equity, but in neither of the two cases of *Shaw v. Borrer*, and *Ball v. Harris*, was it affirmed, that the executor could act without the concurrence of the devisee, and it seems to have been Lord Langdale's opinion, that such concurrence was necessary, for he observed, that the charge affected the equitable, but not the legal estate, 1 Keen 576. Lord Cottenham also, considered the circumstance of *Harris*, one of the executors, being the devisee in trust, as relieving the case before him from a difficulty, and said, that as the estate was charged with the debts, it followed, that *Harris*, being trustee for that purpose, must have the power of executing his trust. There appears, however, good ground for contending, that the charge of debts takes precedence of any devise of the estate; and that therefore, a valid title may be made by the executor alone. It is abundantly clear, that if a will contains an express direction that an estate shall be sold for payment of debts, and no person is named to make the sale, there the executor will have the power by implication, notwithstanding a devise of the legal estate to another. The case we have cited from the year book, and which is also fully reported in

^b But a trust for sale, does not authorize a mortgage where the testator manifests an intention, that there should be a complete conversion of his real estate, *Holden v. Spofforth*, 1 Beav. 390.

2 Sug. Pow. Appendix No. 1, is a leading authority on the point, and has been followed in several other cases stated by Sir E. Sugden, 1 Pow. 133, &c. The learned author concludes a detail of these cases with a remark, that it appears, therefore, to be settled, that a power in a will to sell or mortgage, without naming a donee, will, if a contrary intention do not appear, rest in the executor, if the fund is to be distributable by him either for the payment of debts or legacies.

Now after the Courts have decided, that a charge of debts in a will upon real estate, is tantamount to an express authority to sell or mortgage for payment of them, it seems an unavoidable consequence, that if the executor can make a title in one case, he can also in the other. In *Bailey v. Ekins*, 7 Ves. 319, Lord Eldon said, p. 323, "I am confident Lord Thurlow's opinion was, that a charge is a devise of the estate in substance and effect *pro tanto* upon trust to pay the debts; and subsequently added, a mere charge is no legal interest. It is not a devise to any one, but that declaration of intention, upon which a Court of Equity will fasten; and by virtue of which, they will draw out of the mass going to the heir, or to others, that quantum of interest which will be sufficient for the debts." It seems, therefore, to have been Lord Eldon's opinion, that the devisee as well as the heir, takes subject to the charge, and that he is not a necessary party to a sale by the executor for payment of debts. While, however, the contrary doctrine has apparently received the sanction to which we have referred, every prudent purchaser will insist upon the devisee of the legal estate joining in the conveyance; but the purchase money will of course be payable to the executor.

The powers of the executor would be very incomplete, if it were made incumbent on the party with whom he is dealing, to inquire whether the state of the assets justifies him in resorting to a sale or mortgage, or if such party were bound to see that the money is *bond fide* applied in liquidation of the debts. On principles of convenience, therefore, it has long been a settled rule, that unless the circumstances of the transaction, clearly shew a devastavit by the executor, it is immaterial to the purchaser or mortgagee, whether the personal estate is deficient—whether a proper selection has been made of that part of the real estate which ought to be first applied, or even whether there are any debts remaining unpaid, nor is it any part of his duty to see to the application of the money. *Ever v. Corbet*, 2 P. Wms. 148; *Watkins v. Cheek*, 2 Sim. & Stu. 199; 5 Ves. 736; *Elliot v. Merriman*, Barnard 78, &c. &c. In nearly all the cases upon this subject, there was an *express trust* to pay the debts out of the real estate; and there is an anonymous case in Mosley's reports p. 96, which decides, that where the debts are only charged on the estate, the purchaser shall be bound to see to the application of the purchase money. This case, was, however, overruled by *Elliot v. Merriman*; and in *Jenkins v. Hiles*, 6 Ves. junr., Lord Eldon

observed, p. 654, n. a. that where a man by deed or will, charges or orders an estate to be sold for payment of debts generally, and then makes specific dispositions, the purchaser is not bound to see to the application. If this be the rule when the charge is created in express terms by a testator, it seems clear that it must also apply when the lien arises by implication; and accordingly in *Shaw v. Borrer*, which, as we have seen, was a case of the latter description, Lord Langdale said, "possibly, upon the testator's death, it might not be necessary to resort to the real estate at all for the payment of the testator's debts; and, if it should be necessary to resort to the real estate, some part of it ought in a due administration, to be applied in payment of debts before other parts, and it is said, that the necessity for raising money to pay the debts out of the real estate, and if such necessity exists, the proper selection of that part of the real estate which ought to be first sold, ought to appear, and can only be proved by the Master's report in a suit for the administration of assets. It is true, that if the administration of assets, devolves on the Court by the institution of a suit for the purpose, the Court, in the exercise of its jurisdiction, acts with all practicable caution, and proceeds in strict conformity with its established rules. But this is a caution, exercised not for the benefit of the creditors or at their instance, for they ask nothing, and have a right to nothing, but payment of their debts; and the question is, not what the Court thinks it right to do for the benefit of the persons who have claims, subject to the debts; but whether the estate, subject to debts by the will, and sold and conveyed by the devisees for special purposes, at the instance of the executors, would remain in the hands of the purchaser subject to any claims created by, or founded on the will, or whether there is any obligation to see done that which the Court would do in a suit to administer assets." His lordship in conclusion, expressed his opinion, that the purchaser was not bound, either to inquire whether other sufficient property was applicable or ought to be applied first in payment of debts, or to see to the application of the purchase money.

CONSTRUCTION OF THE TWENTY-THIRD ORDER OF AUGUST.

We reported at page 396, 398, *ante*, the decisions regarding the service of an examined copy of a bill (that is examined by the solicitor) instead of an *office* copy, under the 23d order of 26th August last; and have been referred, by a correspondent, to the report of the previous case of *Blew v. Martin*, in Mr. Hare's reports, p. 50. As the subject is important we give the following extract:

Mr. Sharpe and Mr. Neate said, it had been suggested by the clerks in court, that an *office*

copy of the bill should be obtained and served upon the defendant; but they (the counsel) submitted that it was not necessary to serve an office copy. The order used the word "copy" not "office copy." An examined copy of the bill might be made by the plaintiff's solicitor, and it would be sufficient to serve the defendant with such examined copy. In the present case an examined copy had been made, and the party making it had verified that copy by referring to it in his affidavit as an exhibit, and the same copy, thus made an exhibit, had been sent into the country, and served by another person upon the defendant.

The *Vice Chancellor* made the following order:

Upon motion by Mr. &c., of counsel for the plaintiff, it was alleged, that the plaintiff had exhibited his bill in this Court against the defendants. That he doth not thereby pray any account, payment, conveyance, or other direct relief against the defendant Benjamin Blew; and doth not thereby, as against the said defendant pray a subpoena to appear and answer, but doth thereby pray that he, upon his being served with a copy of the bill, may be bound by all the proceedings in the cause. That a copy of the said bill, omitting the interrogating part thereof, was served on the defendant, Benjamin Blew, on the 4th day of January, 1842, as by affidavit now produced and read, appears. It is therefore ordered that the plaintiff do cause a memorandum of such service, and of the time when such service was made to be entered in the Six Clerk's office.—Reg. Lib. A. 1841, fo. 214 C.M.

The affidavits were as follow:

X (of London) deposed, that he had "compared and carefully examined the paper writing marked A, and shown, to deponent at time of swearing this affidavit, with a bill filed by the above named plaintiff in this cause, on or about the 17th day of December, 1841, against the above named defendant, and that the same is a true copy of such bill omitting the interrogating part thereof, and that the said bill does not, as against the said defendant, Benjamin Blew, pray a subpoena to appear and answer, but prays that, upon his being served with a copy thereof he may be bound by all the proceedings in this cause."

Z (of Bristol) deposed, that he did, on the 5th January, 1842, personally serve the above named defendant, Benjamin Blew, with a true copy of the bill referred to in the affidavit of X, sworn in this cause, on the 4th January, 1842, and marked with the letter A, filed by the above named plaintiff, in this Court, against the above named defendants, by delivering to, and leaving with, the said Benjamin Blew, the said copy bill.

PROPOSED BRANCH POST OFFICE IN CHANCERY LANE.

We understand that the Incorporated Law Society has presented a Memorial to the Post Master General, suggesting the esta-

lishment of a Branch Post Office in or near Chancery Lane. The grounds of the application are as follow:

That in the Inns of Court and Chancery, and the streets and places adjoining, the business of no less than 1300 attorneys and solicitors is conducted and carried on.

That such attorneys and solicitors are the agents of between four and five thousand country attorneys and solicitors, and that consequently more than three-fourths of the letters on the legal business of England and Wales are sent from and received in that neighbourhood.

That there are seven banking houses near Temple Bar, and the persons engaged in trade and commerce, particularly the law and other booksellers and publishers, are very numerous.

That the establishment of a Branch Post Office in or near Chancery Lane, would, therefore, be of great advantage, both to the public and the profession.

That it is of great importance that attorneys and solicitors should be able to send letters by the Post later in the day than they are now taken at the receiving houses, in order that such letters may contain information of the state of legal business down to as late a time in the day as practicable, and particularly at the close of the sittings of the several Courts of Law and Equity.

That attorneys and solicitors are in the daily habit of sending very important papers and documents by the Post, many of which are of considerable weight, as compared with ordinary letters, and that there would be facilities at a Branch Office for weighing such packets of papers and documents to be sent by the Post, which do not exist at the common receiving houses.

That it is frequently material that professional persons should be enabled to obtain Post Office Money Orders, and also accurate and immediate information on points connected with the foreign and inland departments, and that those objects would be best attained at a Branch Office.

SELECTIONS FROM CORRESPONDENCE.

LAW DISCUSSION SOCIETY.

To the Editor of the Legal Observer.

Sir,

It being probable that many gentlemen now under articles of clerkship, or otherwise studying for the law are ignorant of the existence of a Law Debating Society, whilst they are quite aware of the advantages to be derived from one; I have been requested by the Law Students' Society to give greater publicity to its meetings through your columns.

The Law Students' Society, which was formed in 1836, and is under the patronage of the Incorporated Law Society, holds its meetings weekly, at the Law Institution, Chancery

Lane, for the discussion of legal and jurisprudential questions, approved of by a committee formed of some of the members. It is governed by a code of rules calculated to preserve regularity in its proceedings, to exclude such topics as might tend to interrupt the harmony of the society, or interfere with the objects sought to be attained by it, and to bring under discussion the principal disputed points of law, and jurisprudential subjects of general interest.

I beg to add a copy of the fourth, and three following of the rules by which this society is regulated, relating to the admission of members.

"That gentlemen who are serving, or who have served under articles of clerkship, and who are not in actual practice, being subscribers either to the library or lectures of the Incorporated Law Society, be eligible as ordinary members."

"That any gentleman desirous of becoming a member, be proposed and seconded by honorary or ordinary members; who shall immediately deliver in writing to the Secretary their own names, with the name, residence, and qualification (as required by the preceding rule) of the gentleman proposed. That any gentleman proposed to be a member, be voted for at the meeting next after his proposal, and that his name, residence, and qualification, together with the name of his proposer and seconder, appear in the paper of questions for discussion during the previous week; and that the votes of two-thirds of the members present and voting, be necessary for his election."

"That each gentleman on his election, have a copy of the Rules delivered to him, and he shall pay to the Treasurer five shillings, as a fee on entrance."

The Law Students' Society, also desires to express its thanks to the Incorporated Law Society, for the support it has given for several years to its meetings.

I am,

Your obedient servant,
THE SECRETARY TO THE
LAW STUDENTS' SOCIETY.

10, Old Millman Street,
Bedford Row.

CERTIFICATE DUFF.

Is not the present a fitting opportunity for a representation to government of the hardship of this war tax? Considering how professional profits are reduced, and that many, very many men in the profession, are able to prove the great diminution in professional profits, it has occurred to me, that an interview with the Chancellor of the Exchequer might lead to a satisfactory result. At all events, the matter must be agitated, and petitions presented.

CIVIS.

FRENCH LAW OF LANDLORD AND TENANT.

By the law of France, if a person takes a

lease of a house for twenty years, at a rent of, say 1000 francs a year, payable yearly, in case of default of punctual payment of the first year's rent, the whole twenty years' rent become immediately payable, which it must be confessed is an admirable mode of securing the regular payment of the rent by the lessee

L.

STAMP ACT.—RECEIPT.—EVIDENCE.

A. B. gave a receipt to C. D., and the words used in the receipt were "Received of C. D. 100*l.* for goods, and in full of all demands" 1*s.* 6*d.* stamp receipt. Now, a receipt in full of all demands should have a 10*s.* stamp.

Would the words "in full of all demands," anxiously inserted by the debtor from excess of caution, render the receipt inadmissible as evidence of payment of the 100*l.* for which it was given?

A SUBSCRIBER.

SUPERIOR COURTS.

Lord Chancellor.

CORPORATION CHARITIES.—APPOINTMENT OF NEW TRUSTEES.

For the better administration of the charities in towns corporate, formerly administered by the bodies corporate, the Court approves of supplying the vacancies that have happened by death or otherwise, in the number appointed in 1836, after the trusts of the bodies corporate ceased, especially as it appears to have been the will of the founders to have a number of trustees.

The petitions praying references to the master, to appoint new trustees of the charities within the cities of Hereford and Gloucester, the trusts of which were formerly vested in the corporate bodies of those cities respectively, came on now for hearing.^a Of the trustees who were appointed under the Lord Chancellor's orders, subsequently to the 1st of August, 1836, (when the trusts before vested in the corporate bodies, were determined by virtue of the 71st section of the act 5 & 6 W. 4, c. 76), several have since died or become incapable or unwilling to act, and the petitions prayed that the vacancies caused thereby might be filled, and that it might be referred to the master in the usual way to approve of fit persons.

Mr. Girdlestone, and Mr. Barlow, in support of the petition of certain inhabitants of Hereford. Nineteen trustees had been appointed under the Lord Chancellor's order of reference in 1836, for the administration of nineteen charities, producing a revenue of 1500*l.* a-year. As it was difficult to get all the trustees together, which was one reason for appointing so many, they agreed among themselves that seven should be a *quorum* to transact the business. Five of the number have

^a Vide *ante*, p. 330.

since died, and one went to reside at a distance, so that it is difficult to get seven of the remaining thirteen together as often as is necessary. Yet the majority of the surviving trustees opposed this petition of the inhabitants, whose only object was to insure a proper administration of the charities.

Mr. *Richards* and Mr. *Blunt*, for the surviving trustees, said that as there was no imputation on them, or in their administration of the charities, it was only a waste of the charity funds to present this petition for the appointment of new trustees. It was in the contemplation of the diminution by deaths and otherwise, that the court had originally sanctioned the appointment of so many as nineteen. The example of these petitioners, if successful, would be followed in all the boroughs in England and Wales by petitions to fill up vacancies.

The same counsel *pro et con* made the like observations on the petition from inhabitants of Gloucester. The charities there produced a revenue of 2600*l.* a-year, and twenty-one trustees were originally appointed on the application of persons who now opposed the filling up of five vacancies which occurred in the number. The opposition to this petition also was given by the majority of the surviving trustees who attended a meeting to consider the question.

Mr. *Elderton* and Mr. *Cotter*, for the minority of the trustees, who supported the petitions for filling up the vacancies, said that there was not a majority of all the trustees opposed to either petition, it was only a majority of those trustees who attended at the meetings held for the purpose, and in Hereford it was six to two, in Gloucester five to three; but not more than half the trustees in either place attended these meetings, though got up to oppose the petitions.

The Lord Chancellor in giving his judgment on both petitions said, the Court was not called on to declare what number of vacancies must occur in a charitable trust before it ought to be called on to supply any vacancies. All that was necessary to observe at present was that it did not appear that a majority of the present trustees were opposed to the filling up of the vacancies. It appeared, that by the will of the founders of the charities a much greater number of trustees were thought necessary, than the Court afterwards appointed on the report of the Master. In keeping up the number of the trustees to that number then determined on, the Court was only acting up to the will of the founders of the charity. *In the case of Hereford*, indeed, the trustees had, opposing the petition, given judgment against themselves, for it appeared that they originally thought it necessary for the proper management of the charities to have a *quorum* of seven, but afterwards, in consequence of the diminution of their number by deaths, they were compelled to put up with a *quorum* of five, so that in point of fact the administration of the charities then became placed in the hands of three persons who form a majority of these five. It had been urged by the opponents of the petition, that there was no mal-adminis-

tration suggested as a reason for the appointments, and that the Court ought not, therefore, to interfere at present. But he could not admit the propriety of any such argument. It was the duty of the Court to guard against any possibility of mal-administration, or mismanagement, and to prevent all abuse by keeping up the number of the trustees who were vested with the management of the revenues of the charities. These observations applied principally to the Hereford petition. In the Gloucester petition case, the present trustees were still less in a condition to resist the appointment of as many as the whole number originally fixed by the Master; for it appeared that their agent by his affidavit on the original inquiry, declared that in his opinion no less a number than twenty-one would suffice for the management of the charities. His lordship thought, therefore, they had committed themselves much too strongly to resist the petition now and that the prayer of both petitions ought to be allowed. The costs were reserved. His lordship in conclusion wished it to be understood, as the opinion of the Court, that applications of this nature were not to be made lightly, or without a case of apparent necessity for the interference of the Court. In the present case it was to be recollected that the trustees were diminished nearly one fourth in the one case, and one-third in the others, and that the circumstances were such as to call for the interference of the Court in providing for the proper administration of the fund.

In re Hereford and Gloucester Charities.
Sittings at Lincoln's Inn, H. T., 1842.

Rolls.

PRACTICE.—SERVICE OF SUBPŒNA.—CONSTRUCTION OF THE 8TH ORDER OF AUGUST 1841.

Where a subpœna was issued before the new Orders of August 1841, came into operation but not served. Held, that such subpœna might be re-issued and served with the memorandum at the foot, required by the 14th of the new Orders of August, 1841.

Forster moved on behalf of the plaintiff, for leave to enter an appearance for a defendant. The bill had been filed, and a subpœna issued before the new orders of August 1841, came into operation, but the subpœna was re-issued with a memorandum at the foot of it, informing the defendant of the consequence of his not entering an appearance, as required by the 8th Order. The motion was supported by an affidavit of the plaintiff's solicitor, that he had enquired of the plaintiff's clerk in Court, and that he had informed him that no appearance had been entered for the defendant.

His Lordship made the order.

Fendall v. Bench, Jan. 27, 1842.

Vice Chancellor of England.**CONSTRUCTION OF 1 W. 4, c. 60, s. 10.**

The Court will not appoint a new trustee of stock in place of one out of the jurisdiction of the Court, without a previous reference to the master, although the facts all clearly appear by the petition, and are verified by affidavit.

This was an application under the 10th section of the 1 W. 4, for the appointment of a new trustee in place of one out of the jurisdiction of certain stock standing in the name of the latter. All the circumstances clearly appeared upon the petition and were verified by affidavit.

Williams, therefore, asked that an order for the appointment of a new trustee might be made at once, without a reference to the master, and he cited *Ex parte Shick*, 5 Sim. 281.

The Vice Chancellor said it was the province of the master to make the necessary enquiries, and the time of the Court could not be occupied in ascertaining whether parties brought themselves within the meaning of the act.

Re Flood, March 19th, 1842.

PRACTICE.—CONSTRUCTION OF THE 46TH AND 47TH ORDERS OF AUGUST, 1841.

Where a charge for a debt was carried into the master's office, before the new orders of August, 1841, came into operation, the creditor was held not entitled to interest under the 46th of those orders, although his claim was not established till afterwards, the words of that order being prospective, both as to the bringing in and allowance of the charge; but he was allowed the costs of establishing his debt under the 47th order.

This cause came before the Court for further directions, and one of the questions submitted was, whether a creditor who had brought in a claim for his debt a short time previously to the time limited for the commencement of the operation of the new orders of August, 1841, was entitled to interest on the amount of his debt from the date of the decree. The master had allowed the creditor his costs, but refused to allow interest.

Richards, Chapman, Elmsley, and Chandless, for the several parties.

The Vice Chancellor said he must follow the words of the order, which directed that interest should be allowed only where creditors should come in and establish their debts, and as the creditor here had come in before the new order came into operation, he could not be allowed interest.

Lady Traile v. Kibbleshwaite, March 19th, 1842.

Vice Chancellor Wigram.**COSTS.—MORTGAGEE.—ASSIGNEE.**

In a suit for foreclosure against a mortgagee, a provisional assignee is not entitled to his

costs up to the time of disclaimer, or of hearing, where it appears that he has been properly made a party, and that it was not the duty of the plaintiff to have dismissed the bill as against him on payment of costs.

A bill was filed by the Plaintiff as first mortgagee for foreclosure, the mortgagee having become bankrupt. The defendants were the second mortgagee, and the official or as creditors' assignee under the bankruptcy. The assignee put in his answer, alleging that the estate was mortgaged for more than its value, and he therefore disclaimed all right, title and interest to, and in the property, and that he would have released the property had an opportunity of doing so been afforded him.

Mr. Steere for the plaintiff.

Mr. Wood for the subsequent mortgagee.

Mr. Bayley for the assignee, submitted that he was entitled to his costs up to the disclaimer, and also to the subsequent costs, under the circumstances.

The following cases were cited. *Appleby v. Duke*. (Hil. T. 1842. 23 Leg. Obs. 283.) *Hunter v. Pugh*, per Lord Cottenham. *Thompson v. Kendal*, 9 Sim. 397. *Feuster v. Turner*, (by V. C. Wigram, Dec. 1841.) *Perkins v. Bradley*, (by V. C. Wigram.)

Wigram V. C.—The question in this case was, who ought to pay or bear the costs of the official assignee in this suit. In the case of *Appleby v. Duke*, which was lately before me, I had occasion to consider and decide the question, whether a provisional assignee of an insolvent mortgagor, who is made a defendant to a common bill of foreclosure, was, or was not, entitled to his costs in the suit, as against the mortgagee. And upon the authority of *Hunter v. Pugh*, not yet reported, but which came before Lord Cottenham, I decided that he was not. Both in *Hunter v. Pugh*, and in *Appleby v. Duke*, the provisional assignee had not disclaimed. In the case now before me, the official assignee has disclaimed to this extent, that he says the estate is mortgaged for more than its full value, and that he therefore disclaims all right, title, and interest to, and in the property; and he says, moreover, that he would have released the property, if any opportunity had been afforded him. Now it is quite obvious, that a disclaimer of this nature, does not shew that the official assignee was an improper party to the suit at the time of filing the bill, and if he was properly made a party to the bill, then the principle upon which I decided the case of *Appleby v. Duke*, must apply to the case of an official assignee up to the time of filing, and including such disclaimer. But it is further argued, that the assignee is entitled to the costs of being brought here, after he has so disclaimed. I do not mean to deny that there may be a case in which a defendant, who disclaims, may be entitled to claim his costs of the suit, which is brought to a hearing, if when he disclaimed, it appeared he was not a necessary or proper party to the suit. I cannot, however, apply such a principle to a case in which a defendant is a proper party to a suit. The plaintiff

might either have dismissed the bill as against the defendant, the official assignee, paying him his costs on the disclaimer being filed, or he might have brought him to a hearing, and unless the case appears to be one in which it was obligatory upon the plaintiff to have done the former, I do not know how I can hold that he has done wrong in bringing him to a hearing. He had no alternative. I acted upon this principle in *Feuster v. Turner*, and in *Perkins v. Bradley*, which were argued before me lately, and I see no reason for changing my opinion upon the principle which governed my decision in those cases. It was, however, further argued for the official assignee, that such proceedings took place immediately before the bill was filed, as made it improper for the plaintiff to make the official assignee a defendant in this suit. And *Thompson v. Kendull* was cited. It appears in this case, that on the 14th of April, 1840, the solicitor for the plaintiff wrote to the solicitor for the official assignee, stating that unless the mortgage was paid off, a bill would be filed. On the 20th, the solicitor for the assignee wrote to the plaintiff's solicitor, requesting that the bill might not be filed until he should have had time further to inform himself. To this, a reply was sent, telling him, as the fact was, that the bill had been filed on the 18th. Upon this state of facts, I cannot avoid observing that the costs which I am asked to give the official assignee, may have been occasioned in some degree by the precipitancy shown in filing the bill. If the letter of the 14th had not been written, or had merely informed the assignee that the bill would be filed unless the mortgage was paid off by return of post, the observation would not apply so strongly, but a letter stating the bill will be filed, unless the mortgage is redeemed, and nothing more, imports that the individual will not be made a party before he should have had time to enquire into the case. But this part of the case is not brought before me with sufficient distinctness to enable me to act on it, in giving the costs of the official assignee personally against the plaintiff, which I should be obliged to do, if I were to hold that the bill was improperly filed against the former. Nor could I allow the plaintiff to add such costs to the mortgage, as it would operate to the prejudice of the second mortgagee, whose security is already insufficient. The usual decree must therefore be made of foreclosure.

Cash v. Belcher, Feb. 8, 1842.

Queen's Bench Practice Court.

SERVICE IN EJECTMENT.

Service in ejectment on the servant of the tenant on the premises, who subsequently stated that she had delivered the declaration to her master, by whom an attorney was appointed to defend the action, was held sufficient for a rule nisi for judgment against the casual ejector.

Fry moved for judgment against the casual ejector. The affidavit stated that service had

been effected upon the female servant of the tenant in possession upon the premises, and that upon subsequent enquiries she stated that she had delivered the papers to her master. The tenant was afterwards seen, but refused to acknowledge the service, and referred to his attorney. It was urged that the appointment of an attorney was a sufficient proof of an admission by the tenant that legal proceedings had been taken against him. *Doe d. Agar v. Roe*, 6 Dowl. P. C. 624, was cited.

Williams, J., granted a rule nisi.

Doe d. Elderton v. Roe, H. T. 1842. Q. B. P. C.

INDICTMENT.—CERTIORARI.

An indictment for perjury having been found at the assizes for Leicester, the Court refused to grant a certiorari for its removal to London, on a suggestion that the truth of the evidence given by the defendant depended upon the result of a long series of accounts, and that a point of law was likely to be raised in the case.

In this case an indictment for perjury had been found against the defendant, at the last summer assizes for the county of Leicester.

Whitehurst now moved for a *certiorari* to remove the indictment to London, with a view to its being tried by a special jury, upon an affidavit that it was believed that the truth of the alleged false evidence given by the defendant would depend upon the result of a long series of accounts, and that it was believed that a point of law would arise upon the trial.

Williams, J.—Hosiers and other tradespeople understand accounts as well as knights or squires for aught I know; and as the indictment is to be tried before a judge of assize, and not at sessions, the writ should not go.

Regina v. Morton, H. T. 1842. Q. B. P. C.

Common Pleas.

PLEADING.—DUPLICITY.—NEGATIVE PREGNANT.—IMMATERIAL ISSUE.

To a declaration in assumpsit, by the public officer of a banking company, under the 9 Geo. 4, c. 46, upon divers bills of exchange, the defendant pleaded a release by indenture executed by one I. M., therein described to be the manager of the bank, and alleged that the said I. M. executed such indenture for and on behalf of the said company, and duly authorised in that behalf, and which execution by the said I. M., as such manager, hath been since duly ratified and confirmed by the said company. Replication, that the said I. M. did not execute as such manager on behalf of the company, nor was the said I. M. authorised in that behalf, modo et forma: Held upon special demurrer, that the replication was not objectionable on the ground of duplicity, or as involving a negative payment, and that it did not tender an immaterial issue in denying only the authority of I. M. to

execute, because that in effect traversed the allegation of ratification.

This was an action of assumpsit, brought by the plaintiff, as public officer of the National Provincial Bank of England. The effect of the pleadings is stated above. The defendant demurred specially to the replication, upon the three grounds of duplicity, that it involved a negative pregnant, and that it tendered an immaterial issue.

Mr. Serjt. *Stephen*, in support of the demurrer, argued, first, that the replication was double in denying three distinct facts, namely, the execution of the indenture by *I. M.*, his character as manager, and the execution on behalf of the company, any one of which would have been a sufficient answer to the plea. He cited Bro. Abr. tit. Double Plea, pl. 90; *Griffin v. Yates*, 1 Bing. N. C. 579; *Smith v. Dixon*, 7 Ad. & El. 1. Secondly, the application involved a negative pregnant, for it was to be implied, that although *I. M.* did not execute the indenture for the company, yet, that he did execute in some character, and the gist of the issue tendered was therefore left doubtful. Bac. Abr. tit. *Pleas and Pleading*, pl. 6. (Vol. 6, p. 309. 7 Ed.) shewed the principle upon which this objection was founded. Thirdly, the issue tendered was immaterial, for although the replication might be taken to admit the execution by May, and to deny his authority, the ratification of his act by the company, was left untouched. *Thurman v. Wild*, 11 Ad. & El. 453, was cited.

Mr. Serjt. *Channell*, and Mr. J. *Henderson* for the plaintiff. The replication was not double, but put in issue several facts which amounted but to one point of answer to the plea, and this might be done. *Robinson v. Raley*, 8 Burr. 316; 2 Lev. 82; *O'Brien v. Saxon*, 2 B. & C. 908; *Webb v. Weatherley*, 1 Bing. N. C. 502; *Bennison v. Thelwell*, 7 M. & W. 512; *Pigeon v. Osborne*, 9 Dowl. P. C. 511. Secondly, the doctrine of negative pregnant was now exploded, and would not be acted upon, or at all events, it was by no means so strictly followed as formerly. Thirdly, there was nothing in the plea to shew any authority on the part of *I. M.* to execute deeds on behalf of the company, nor was there anything in the 9 Geo. 4. c. 46, which conferred such a power on the manager of the bank. The plaintiff, therefore, when he denied his authority, in effect denied the ratification of his act.

Stephen having replied

Tindal, C. J.—A double pleading, is where two substantial answers are contained in one pleading, to that which precedes it, each of which is in itself a separate answer. The question here, is whether a plea which states several matters, states any more than those separate matters, which when taken together only form one ground of defence? For if so, the defendant, having a right to put them in his plea, the plaintiff is entitled to put him to the proof by his replication. The defendant, by his plea stated that which amounts to a release, and in order to make out a sufficient

statement of a release, he must state not only that *I. M.* executed, but that *I. M.*, who is a stranger to this record, had authority to do so, and he states these facts, and also that the execution was ratified by the company. It would not be enough for the plaintiff, in his replication, to deny only the execution, but he must also deny the authority of *I. M.*, and he denies it *modo et forma*. He, therefore, treats the alleged ratification as evidence of the authority of *I. M.* to execute the deed, and in denying the authority, he denies also the ratification. I cannot distinguish this case from *Bennison v. Thelwell*, and *Pigeon v. Osborne*, and upon the authority of those decisions, think the plaintiff is entitled to judgment. With regard to the objection, that this replication involves a negative pregnant, I think that it cannot prevail. This is a very learned doctrine, which seems to have had very great weight, according to the law books, at an early period, but which at the present time is not so much attended to. But it would appear, that when a pleading is objected to on the ground of duplicity, and it is not objectionable on that score, you cannot say that it is open to the objection, that it involves a negative pregnant, because if it was otherwise, it would in effect establish a rule in this case, that although the plaintiff has a right to put in issue all these three facts as amounting only to a single ground of defence, yet he shall not, on this ancient ground of objection, avail himself of it. The object of pleading is, however, to reduce the issue to one point, involving the real question in dispute, and I do not think that this objection can prevail. What I have already said, will meet the third point contended for by the defendant, with reference to the traverse of the ratification.

Coltman, Erskine, and Maule, J. J., concurred.

Judgment for the plaintiff.

Bell, v. Tuckett, H. T. 1842. C. P.

BILLS IN PARLIAMENT RELATING TO THE LAW.

House of Lords.

BILLS IN PROGRESS.

For the better administration of Justice in the execution of Commissions of Lunacy.

[For 2d reading.] The Lord Chancellor.

For the amendment of the Law of Bankruptcy:

[For 2d reading.] The Lord Chancellor.

To define the Jurisdiction of General and Quarter Sessions.

[For 2d reading.] The Lord Chancellor.

For the Amendment of the Law relating to Bankrupts, and the better Advancement of Justice in certain Matters relating to Creditors and Debtors. Lord Cottenham.

[For 2d reading.]

To improve the Practice and extend the Jurisdiction of County Courts.

[For 2d reading.] Lord Cottenham.

To enable the Lord Chancellor to direct certain Proceedings in Bankruptcy, Insolvency,

- and Lunacy to be carried to the County Courts. Lord Cottenham.
 [For 2d reading.]
 For establishing Local Courts.
 [For 2d reading.] Lord Brougham.
 For transferring Appeals from the Privy Council to the House of Lords.
 [For 2d reading.] Lord Campbell.
 For making better provision for hearing Appeals in the House of Lords.
 [For 2d reading.] Lord Campbell.
 For the better Administration of Justice in the Court of Chancery.
 [For 2d reading.] Lord Campbell.
 To enable Baptists to make affirmations, instead of oaths. Lord Denman.
 [For 2d reading.]
 For improving the Law of Evidence.
 [In Committee.] Lord Denman.
 For enabling Ecclesiastical Corporations to grant Leases. The Bishop of London.
 [In Committee.]
 For enabling Incumbents of Benefices to grant Leases. The Bishop of London.
 [In Committee.]
 To limit the Criminal Jurisdiction of Quarter Sessions. Lord Godolphin.
 [For 2d reading.]

House of Commons.

NOTICES OF BILLS.

- To allow Writs of Error on Mandamus. The Attorney General.
 To alter the Law as to Double Costs, and other matters. The Attorney General.
 For the more effectual inspection of Houses, licensed at Quarter Sessions for the Insane. Lord G. Somerset.

BILLS IN PROGRESS.

- To regulate the Sale of Parish Property. [For 2d reading.] Sir E. Kuatchbull.
 To amend the Law of Copyright. [In Committee.] Lord Mahon.
 For Registering Copyrights and Assignments, and better securing the property therein. [In Committee.] Mr. Godson.
 For the Regulation of Buildings. [In Committee.] Mr. F. Maule.
 For the Improvement of certain Boroughs. [In Committee.] Mr. F. Maule.
 Municipal Corporations. [In Committee.]
 To consolidate the Queen's Bench, Fleet, and Marshalsea Prisons. Sir J. Graham.
 [Passed]
 Small Debt Courts Bills for
 Barnsley,
 Leicester, (jurisdiction 15*l*.)
 Honiton.
 Kingswinford,
 Liverpool.

The important Law Bills now in progress in the Upper House, are unusually numerous, namely,—three introduced by the *Lord Chancellor*, three by *Lord Cottenham*, three by *Lord Campbell*, one by *Lord Brougham*, two by *Lord Denman*, two by the *Bishop of London*, one by *Lord G. dolphin*; and we may add, one intended to be renewed by *Lord Langdale*, for consolidating and amending the law of attorneys.

STATE OF THE CHANCERY CAUSE PAPER.

THE *Lord Chancellor*, after taking his seat in Court on Thursday, the 24th instant, said some mistake had gone out among the Bar, as to what he had said about the state of the business of these Courts. He had paid some attention to the matter, and found that it would be necessary to make further transfers of causes. He would take an opportunity of conferring with some of the leaders on the subject.

His Lordship soon afterwards handed down, through the registrar, a paper to Mr. *Wakefield*, who had just come in, and after receiving it back, with an observation from Mr. *Wakefield* that it was correct, his Lordship read a statement from it to this effect:—

Causes before the Master of the Rolls	81
— Before the V. C. of England..	86
— Before V. C. <i>Knight Bruce</i> ...	15
— Before V. C. <i>Wigram</i>	33

Making in all..... 215

Of these 215 causes, 98 were set down for hearing last year—that is from the 1st of November to Christmas, and 117 have been set down this year. All the causes that were set down before November last, are disposed of.

THE EDITOR'S LETTER BOX.

We have been obliged to postpone several communications, but hope to insert them in our next number.

The letters of "A Young Solicitor," "A Country Subscriber;" "Vindex," and "A Subscriber," have been received.

We are informed that there is an error in a note to *Gibson v. Huines*, p. 411, *ante*. The *Lord Chancellor* did not say any thing as to "the convenience to the clerks in Court," but in reply to Mr. Romilly's application on behalf of the six clerks, to know his lordship's opinion as to what part of the bill, the prayer, according to the 23d new order, "that a party, on being served with a copy of the bill, may be bound, &c." should be inserted; his lordship said it appeared to him to be "a substitution for the prayer for *subpœna*," and really it is surprising how a different interpretation could be put on that order.

"A West Riding Solicitor," and others who have written on the present opportunity for pressing the repeal of the certificate duty, shall be attended to.

The papers on legal examination distinctions, and extra judicial oaths, shall be considered at the earliest opportunity.

The Legal Observer.

MONTHLY RECORD FOR MARCH, 1842.

—“Quod magis ad nos.
Pertinet, et nescire malum est, agitamus.”

HORAT.

DEBATES IN PARLIAMENT RELATING TO THE LAW.

PROCEEDINGS IN LUNACY.

THE following is the substance of the debate which took place on the 8th instant on the introduction of this bill.

The *Lord Chancellor* said, that pursuant to the notice he gave last night, he was about to lay upon the table a bill to amend and improve the law, or rather the proceedings in cases of lunacy, and would in a few words endeavour to lay before their lordships the general scope of his bill. In cases where amendments like the present were proposed, it was important to consider the actual state of the law, what were the evils to be remedied, and what the nature of the remedy proposed.

As to the state of the law, their lordships were aware that there were certain standing commissioners to whom petitions in lunacy cases were referred. Those commissioners were men most competent to the discharge of the duties confided to them, but their jurisdiction was limited to a distance not exceeding twenty miles from the metropolis. Beyond that distance commissions in lunacy cases were sent to persons of whom the *Lord Chancellor* had no knowledge, and who had little or no experience in such delicate matters, and hence sometimes arose serious mistakes, which entailed very considerable expense on the estates of the lunatics.

He would now say a word as to how the expenses of those commissioners were defrayed. The commissioners were paid by fees, which were charged on the estates of the unfortunate lunatics. In the same way the commissions of bankrupts were paid by fees out of the bankrupt's estate, until the practice was altered by the bill brought in for that purpose by his noble and learned friend (*Lord Brougham*), who then held the great seal. The expenses in lunacy cases were great, and pressed heavily upon the estates of

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that unhappy class of persons. As illustrations of the pressure of those fees he would state the amount of those received by the commissioners in a few instances. In the case of *Lord Portsmouth*, which he would admit was an unusual one, and where there were six commissioners, instead of the ordinary number of three, the amount paid to those six was 1,071*l.* In the case of *Mr. Davis*, where there were only three commissioners, the amount which they received in fees was 346*l.* 10*s.*; and in fact in this case the fees absorbed the whole of the unfortunate man's estate. In the recent case of *Mr. Gundry* the fees amounted to 220*l.*, and in another case, which occurred in the country, and where there was only one commissioner, who sat four days, the fees amounted to 75*l.* Such an amount of fees pressed, as he had said, very heavily on the estate of lunatics; so much so indeed, that where the estate was small the friends of the lunatic were afraid to apply to the *Lord Chancellor*, for they were well aware that the consequence of the lunacy commission would be to consume the estate, and he would be left without adequate protection as to person, and very little as to property. He had said, that many of those to whom commissions were directed in the country were quite inadequate to the duties thus imposed on them; and it often happened that commissions were quashed for irregularity. A new commission was to be issued, and thus the expense had to be gone over again. A case of this kind occurred with respect to a person named *Holmes*. The commission was sent down, and as soon as it was returned it was quashed for irregularity. Another commission was sent down, and the expense thus occasioned amounted to 5,200*l.*, not including the fees before the master.

The remedy which he proposed in the bill to be laid on the table was to appoint two permanent commissioners, who would preside in cases of lunacy in town and also in the country. Those two, who would be men of ability and distinction at the bar, would be paid not by fees, but by fixed salaries; and then there would be a fixed and regular system applying to all cases.

But this was not all. At present lunacy cases were decided by a jury of twenty-four, as there must be the assent of twelve at least to make the inquisition, and return their verdict. These twenty-four jurors acted in the nature of a grand jury. They were paid one guinea per day each day the inquiry lasted, and he need not observe that this item of expenditure formed a very considerable portion of the expense of lunacy commissions. In the case of Lord Portsmouth the fees to the jury amounted to 410*l.* 11*s.*; in the case of Taylor, whose estate was a very small one, to 175*l.* In the case of Davenport the jury fees came to 315*l.*; and in that of Lady Kirkpatrick to 193*l.* When these were added to the very large amount paid to the commissioners, their lordships would at once perceive the ruinous effect such a trial must have on a small estate of a lunatic.

To diminish this expense as far as possible his bill proposed to vest in the Chancellor a discretionary power to have the case tried, in certain cases, with a jury of twelve, who need not be unanimous in their finding. He would thus have two men of learning and distinction at the bar, who would attend to country as well as town cases.

There was another point on which he proposed a change. It was well known that under the present system after the finding of the jury and the return of the commissioners there were certain inquiries to be made at the Masters' offices, and from information which he had received on the subject he learned that sometimes a year and a half elapsed from the report of the commissioners to the appointment of a committee to take care of the person and estate of the lunatic. In one case two years were allowed to elapse before the appointment of the committee. What he proposed as a remedy would be, that the commissioners should have power to make inquiries as to the estate and effects of the lunatic, and such other matters as the Lord Chancellor should intrust them with, but if any difficulty should arise, the case should be referred to the Master, as at present. There was another subject on which he would say a word. There was an officer in the Court of Chancery called Clerk of the Custodies, a very old and patent office, the occupant of which received large fees. In a bill which had been brought in on a former occasion by his noble and learned friend (Lord Brougham) he tried to abolish that office; but it was found that this could not be done till the death or resignation of its present holder. He (the Lord Chancellor) would propose to abolish the office, the duties of which could be well performed by the secretary of lunatics, and he would have the Clerk of the Custodies receive compensation out of the suitors' fund in Chancery, the amount of compensation to be fixed by the Master of the Rolls and the Vice Chancellor.

There was another point on which he would say a word. His noble and learned friend (Lord Brougham) had appointed visitors of lunatics; those visitors consisted of medical

men, accompanied by a barrister, and he was happy to say that that plan had worked admirably well. He would propose to make the two commissioners visitors *ex officio*, with power at any time to visit by themselves, or with the ordinary visitors, and he had no doubt it would be productive of much benefit. These were the general outlines of his bill. The details he would reserve for the committee.

Lord Brougham said, he would gladly adopt some such measure as that now proposed by his noble and learned friend. In the main he concurred with him, but he would rather reserve anything like detail to a future and more convenient stage. He was glad to know that the system of visiting had worked so well, and that those appointed to those duties had discharged them so faithfully. He had no objection to the abolition of the office of Clerk of the Custodies, but that, also, he would defer any observation upon to a future stage.

Lord Cottenham would also avoid entering into the details of the bill, but he must say, that to the principle of appointing two commissioners, who were to go through the country, he had objections, for he did not think they would be able to go to the different parts where their services might be required. He would also hesitate before he allowed the interests of lunatics to be removed from the care of the Masters. As to the proposition of abolishing the office of Clerk of the Custodies, and paying him a compensation out of the suitors' fund, he must protest against the latter part of the plan. He could not consent that the funds of one class of suitors should be applied to quite another class, or to a purpose for which they were not intended.

The Lord Chancellor said, that when the proper time came for discussion of the measure in detail, he should be able to show how the Local Courts bill could be made available for some of the purposes of this bill. As to the suitors' fund his noble and learned friend must know that part of it arose from the accumulation of the funds of lunatics as well as others.

Lord Cottenham.—So far as they did, he would not object to their proposed application, but beyond that he would not go.

Lord Brougham saw no more inconsistency in giving from the suitors' fund to that of lunatics, than in giving the funds of one suitor to help another; but he repeated, the best time for this detail, would be when the bill was in committee.

Lord Campbell asked, would the two commissioners sit together or separate?

The Lord Chancellor said that only one would sit, except on some special and important occasions, when the Chancellor would have the power to direct the second commissioner to sit. In the case of Lord Portsmouth the usual number of commissioners was doubled.

* It appears from this that the Lord Chancellor has still a local court bill in reserve.

LAW OF EVIDENCE.

Lord Denman, in moving the second reading of this bill, said he begged to call their lordships' attention to a subject of great and general importance in the administration of the law, in which he proposed to introduce a great change certainly, but one which he believed he might say was, in its principal object at least, desired by almost every one connected with the law. For the last 100 years the opinion very strongly prevailed—an opinion which had been expressed by Lord Mansfield, and not dissented from by later judges—that the evidence of interested witnesses should be received. It was felt to have been of the highest importance that all facts known to any individual should be laid before the jury who were to try the issue, in order that they might themselves judge of the credit of the witness, and of the truth of the evidence in reference to the whole of the circumstances upon which they should form their judgment.

The first object of the bill then was, to remove in every case, except where they were substantial parties to the suit, the objections to receive the evidence of *witnesses interested* in the result of the case. He might mention, that beyond the great object of ascertaining the truth, there was another motive for introducing a bill of this description, namely, the extreme difficulty of laying down satisfactory rules, as to what degree of interest should be held to disqualify,—a course which must give rise to an infinite variety of exceptions. This bill would prevent a great deal of expense, delay, and inconvenience now very frequently brought upon suitors, in consequence of their being prohibited from supporting their case by the testimony of interested witnesses, while it would effect a great saving of time in courts of justice. Indeed, he felt it necessary to enter upon this part of the subject at large, in order to recommend the principle to their lordships. He had the satisfaction of being able to state that the bill had been suggested to him by several of his learned brethren who now occupied distinguished seats upon the bench, and no objection had been raised to this portion of it.

Regarding the second portion of this bill some doubts were entertained. Their lordships were aware that, by the Law of England, a person convicted of certain crimes had his lips closed as a witness for the rest of his days; that, if properly shown to have been convicted of one of a particular class of crimes, including some felonies and perjury, that in that case, however important might be his evidence, and however necessary to the suitor that he should be called upon to disclose what he alone might know, yet he was not permitted to be heard as a witness. Now, although such was the law, he apprehended that during the present assizes there would hardly be a case of importance brought forward, in which it would not be found that some witness would present himself in the box, covered with crime, admitting him-

self guilty of the greatest offences, and probably betraying those very associates whom he might have tempted to commit the crime with which they were charged. In the present state of the law the lives of the accused parties might mainly depend upon the evidence of such a man as that. It was, therefore, clear, that according to the principles of common law, it was not merely the commission of crime which prevented a court of justice from hearing what a criminal had to depose. The law was very whimsical in this respect, because if any one of the parties accused had the power to purchase a record of the conviction of the witness they might all escape.

This was a state of things which ought not to be. There ought to be a greater certainty in the law. It was not on account, as he said, of the commission of the crime that the witness was disqualified, but upon a variety of accidents—upon the wealth and consideration, or the knowledge of the law, of the party who might happen to be accused. There was one particular crime which more than the rest appeared to disqualify a witness—namely, the crime of perjury. It did appear objectionable, certainly, that a person already convicted of swearing falsely should still be admitted to depose upon oath in a Court of justice. It had been said, that the prohibiting was the punishment appropriate to the crime, and that it was, as it were, the testimony which the law bore of its abhorrence of perjury. But then look to the effect produced upon the witness by accidental circumstances. Unless the party wishing to get rid of his testimony proved him to have been guilty of the crime of perjury by presenting a record of his conviction, he was not disqualified as a witness; or, if pardoned, as was often the case, he might be heard again as a witness, notwithstanding a conviction of that sort. The objection to this was, that the punishment did not fall upon the witness, who would often prefer not being called upon, as he might be in the possession of most important facts, and alone in possession of those facts upon which the elucidation of the truth, the condemnation of the guilty, or the acquittal of the innocent, might depend. He was sure their lordships would be of opinion that it was not fit that a person in that situation should be prevented from laying his evidence before a jury, who would consider it according to its real value, who would see whether it was consistent with all the circumstances of the case, and whether it was free from all motives to mislead or to deceive. And yet it was only the proof of the record of conviction that disqualified. In the absence of that proof the testimony of the witness could be received.

He would quote a case to their lordships which strongly illustrated the propriety of removing objections of this nature to the testimony of witnesses. In the course of last term a gentleman called upon his attorney to account for large sums of money received by him during several years. The attorney answered the affidavit in the usual way. The client had

employed a particular person as steward or bailiff, with whom the attorney had been in communication, to whom he alleged having paid various sums of money, and who was, therefore an important person to shew the nature of the case. The client brought the attorney criminally before the court to answer for this supposed malversation, and then produced a record of the conviction for perjury of his own steward or bailiff, the very man whom he had put in communication with his attorney, and thus entitled himself to prevent a statement of the truth from being heard.

He had thus submitted to their lordships his observations upon two of the objects of the bill, namely, to admit the evidence of persons whose credit was subject to doubt, arising from their interest in the result of the cause, and of persons who had been held to be disqualified by their conviction of certain crimes. To these objects he had added two other matters of high importance, which he thought were properly introduced into a bill for the improvement of the law of evidence. A certain denomination of *Baptists* had urged, in a petition to the house, their admission to the privilege enjoyed by Quakers and Moravians, of making an *affirmation* instead of an oath. All baptists did not participate in the same scruples; but there was one class that did entertain scruples to taking an oath, and who thought themselves entitled to the privilege in this respect which other sects were allowed. Another object was to remove a distinction in criminal cases, in which it was customary to set forth the proceedings before the grand jury and the petty jury. Formerly all jurors were sworn, and it was then said, "the jurors upon their oaths;" but now some were sworn and others affirmed, and in drawing up the record this distinction led to a vast number of unnecessary words, and also to doubts, if the record were not correctly drawn up. He proposed that one form should be used.

The *Lord Chancellor* did not rise to oppose the second reading of the bill; on the contrary, he was very much disposed to support it. As far as he had had an opportunity of ascertaining the opinions in Westminster-hall, those opinions coincided, to a considerable extent, with the view which his noble and learned friend had taken of this subject. It appeared to him (the *Lord Chancellor*) proper that the bill should be read a second time, and that it should go into committee; at the same time, he suggested to his noble and learned friend, that in a measure of this kind, the responsibility of which must rest, in a great degree, upon the government, ample time should be allowed for consideration, and that the bill ought not to go into committee till after the circuit, when their lordships would have all the advice and suggestions of Westminster-hall upon this grave subject.

He had always thought that, since the time of Lord Mansfield, when objections had been confined rather to the credit than to the competency of witnesses, evidence should not be shut out, but that witnesses should be admitted

to give evidence, and that courts should decide upon their credit in considering the whole case. It was impossible to consider the present state of the law without seeing the absurdity of this part of it. A person convicted of perjury was not competent to give evidence;—why? Because the disqualification was part of his punishment for a crime he had committed; whereas the punishment fell, not on the party who committed the crime, but on the individual who stood in need of his evidence. Mark the inconsistency, too: a person who stole property to an amount which fell within the offence of petty larceny might give evidence; but if it was grand larceny, he was not competent to give evidence: so that it depended upon whether he stole 12*d.* or 14*d.* A party guilty of manslaughter, by running over a child, for example, by an act of negligence, was not competent to be heard as a witness; but did such offence impair his credit, or impeach his testimony? If a criminal had gone through his punishment, then he became a competent witness; but could his testimony be more safely relied upon than before? In Lord Warwick's case, it was held that a person convicted, but not burnt in the hand, could give evidence; whereas, if he had been burnt in the hand, he would have been incompetent. An accomplice in a crime was allowed to give evidence; and what did the judge say in such a case? He told the jury, "you cannot safely rely upon the testimony of such a witness unless he is supported on some material facts." Therefore, some witnesses were allowed to be heard who admitted they were guilty of crimes; and why could not the principle be more extensively applied?

Then with respect to *interest*; his noble and learned friend was correct in stating that the present state of the law raised questions of the nicest kind. If a man had a direct interest in the result of a cause of the value of one shilling, he could not be heard as a witness in it; but if he had an interest ever so large, provided it were not absolutely certain, though it might be almost certain, he would be entitled to be heard. For example: an old man has a son entitled to a large estate, which, according to all moral probability, would, after the old man's death, be his; suppose the father has a suit in a court of law which involved 20,000*l.*, or 100,000*l.*; the son is competent to give evidence in his behalf; yet if he is directly interested to the value of one shilling, he is excluded. How inconsistent was this. Again: persons whose names were endorsed on a policy of insurance, though deeply interested, could be admitted as witnesses for another indorser. Again; on motions, the evidence of persons was admitted in affidavits which was excluded in an action before a jury. For these reasons he was strongly inclined to support the principle of his noble and learned friend's measure. Whether it should extend to perjury, and whether some modifications should not be introduced into the bill, it was not necessary now to consider. When Westminster-hall returned to its seat, their lordships could consult the judges upon those points. He had had some conver-

sation with some of the learned judges, who concurred in the principle of the measure.

Lord Brougham said his noble and learned friend had not overated his case—he had rather understated it, upon the subject of the present law excluding evidence on the ground of interest. The case of the heir-apparent might be made still stronger. The party in possession of the estate might be not only old, but bedridden, and lunatic; he might have already made his will, or if not, he might have no other child; and yet this son might be admitted as a witness in a suit, to swear 40,000*l.* or 50,000*l.* into his pocket in a few weeks, or even days; whereas, if he were directly interested to the amount of one shilling, or the remainder vested in him, he would not be competent. It gave him grave satisfaction to see such a bill brought in with a prospect of its being carried and becoming the law of the land. Fourteen years since he had proposed in the other house the greater part of the intended changes, and had supported them by the same arguments he had heard that night, and he was thereby encouraged to hope that other changes would be introduced and become the law of the land. He should only allude to one. His noble and learned friend on the woolsack had referred to the fact, that parties themselves were heard in affidavits. He (Lord Brougham) hoped that parties themselves might be heard in causes.

Lord Wynford concurred with most of what had fallen from his noble and learned friends. It had long been his wish that alterations should be made in the law of evidence. He would carry the alteration still further, and strike out the proviso in the first clause which excluded the plaintiff and defendant from being examined. Why should they not be allowed to give evidence in an action when they were heard in affidavits? His noble and learned friend had referred to the case of an old heir-apparent (Lord Brougham.—“No, an heir-apparent to an old man.”) and he had justly remarked that it was not consistent with common sense that he should give evidence, whilst a remainder-man is excluded. With regard to the relief to baptists, he had thought that there were no congregations of baptists, that objected to take an oath, and he thought it would require serious consideration, for their lordships could not be ignorant of what passed every day in our courts of justice, where persons got up and said they had a religious objection to taking an oath, who in some cases, appeared to be the receivers of stolen goods, and whose real objection was to aid in the convicting of their old friends.

Lord Campbell entirely concurred in the measure, and thought (in opposition to the opinion of his noble and learned friend who had last spoken) that it would be inexpedient to allow parties to give evidence in their own cause. He thought that great evils, (and he spoke from experience) would arise from such a change, for when a party spoke in his own behalf, his feelings and passions carried him on till he forgot what was true. What would be the consequence if a man were allowed to

bring an action against a lady and to be a witness in his own cause, and she were to be a witness against him, and the jury were to decide which they were to believe? It seemed to him that a change should not be introduced without great deliberation, which would make a man a witness for himself, though he might be examined against himself; and now a bill of discovery might be filed, to which a party is bound to answer. But to remove the bar as far as interest was concerned would be a great improvement in the judicial system of the country, and prevent justice being frequently defeated by frivolous and vexatious objections. Under the present system, witnesses were disqualified by the most trifling interest. In his experience he had known cases of verdicts, satisfactory to judges, which had been set aside because some witnesses had been admitted or rejected by the judge improperly on the ground of interest. The true principle of disqualification was not interest, but bias. With respect to the clause relating to the baptists, he lamented that his noble and learned friend had not gone further, and declared that all persons who had religious scruples to taking an oath might make an affirmation. He was astonished at the remark of his noble and learned friend (Lord Wynford), that receivers of stolen goods scrupled to take an oath, lest they might convict a thief, since the bill would obviate that very evil by enabling the party to give evidence without being sworn. Upon the whole, the bill, in his opinion, was founded upon the best principles. He thought it required great attention, and considerable modification in the committee.

Lord Denman expressed his satisfaction at the manner in which the bill had been received. It was his anxious wish that it should undergo the fullest consideration, and he was ready to place it in other hands, if it was likely thereby to be carried forward more effectually. He was not prepared to go the length of saying, that parties in the cause ought to be admitted as witnesses openly in Court, though perhaps their evidence might be had by administering interrogatories to them, under proper care, by which a great deal of truth might be obtained. With respect to the clause relating to a particular sect, if it was the general opinion of their lordships that it should not form a part of the present bill, he was prepared to make it a separate measure.

The Lord Chancellor observed, that it would not be wise policy to expose the bill to objections from various quarters.

The bill was then read a second time, and ordered to be committed the first Thursday after the recess.

LAW OF ATTORNEYS.

LIABILITY FOR WANT OF SKILL AND DILIGENCE.

IN undertaking a client's business, an attorney or agent, in England or Scotland, undertakes on his own part for the existence and the due

employment of skill and diligence; and where an injury is sustained by the client in consequence of the absence of either, the attorney is responsible for such injury.

In a case in the Court of Session in Scotland, it appeared, that the masters of certain apprentices had employed an attorney to take proceedings against such apprentices for misconduct, and the attorney proceeded on the section of the statute which related to *servants*, and not to *apprentices*, and the Court held that this was an instance of such want of skill or diligence, as to render the attorney liable to repay to his clients, the damages and costs occasioned by his error. It appeared also, that in the first instance, the magistrates proceeded to convict on the wrong section; but this, it was held, furnished no excuse to the attorney for founding his proceedings upon it.

On an appeal to the House of Lords against this decision,

The Lord Chancellor, after stating the nature of the case, said:—The parties agreed upon a special case, and on the facts, therefore, there is no question. The employment of the appellants by the respondents is assumed in the special case, and it is also assumed that their instructions were generally to prepare petitions to the justices of the peace against the two apprentices Houston and Crookshanks; at least no special instructions are stated. These two apprentices, and a third named Hunter, who was likewise convicted, appealed against the convictions, and the appellants acted for the respondents in maintaining the legality of the convictions. The conviction in the case of *Hunter*, being the first investigated, was quashed, and he was consequently liberated. No further opposition was offered to the proceedings instituted by *Houston* and *Crookshanks*, and they were also set at liberty. The apprentices having subsequently brought their actions for false imprisonment, the respondents (with the general concurrence of the appellants) settled those actions by paying 25*l.* to each, besides their costs. This agreement was not to prejudice the present action, but was by consent to be considered as if damages to the same amount had been awarded by the verdict of a jury. No objection was taken to the form of the proceedings in *Houston's* case, when that case was before the justices, but there was in *Crookshanks's*; and the objection was overruled. Although these proceedings cannot be held to be absolutely conclusive as to the illegality of the imprisonment, yet I think it is difficult, in the face of these admissions, for the appellant to contend that the convictions were legal, and consequently, that the adjudication of their illegality, and the order for the discharge of the apprentices, were not well founded. They admit that it was by their own consent, and with the advice of their agent, that no opposition was made to the adjudication, and the consequent order for their discharge. There is, I think, no doubt

of the illegality of the proceedings against the apprentices.

The question, therefore, is reduced to this—*was there such a degree of negligence or ignorance on the part of the appellants, in conducting the case against the apprentices, as to subject them to the liability of indemnifying their employers against the injury which has arisen from it?* Their instructions were general, to prepare petitions to the justices of the peace, against the apprentices, for having deserted their work, and for otherwise misconducting themselves. It is, I think, quite needless to inquire what course the appellants, acting on these instructions, ought to have adopted if any serious difficulty existed as to the construction of the act 4 Geo. 4, c. 34, because the most recent statute was naturally the authority to resort to it. It has been, however, well observed, that had the construction been thought doubtful, all danger of error might have been avoided by referring to the statute generally, without specifying the particular section. But I cannot discover any ambiguity or doubt as to the construction of the act; it recites the 20th Geo. 2, c. 19; the 6 Geo. 3, c. 25; and the 4th Geo. 4, c. 29. In the first of these statutes, the distinction between servants and apprentices, is very intelligibly marked. The title of the 6 Geo. 3, c. 25, is "An Act for better regulating Apprentices and Persons working under Contract." And the 6 Geo. 3, c. 25, extends the provision of the two former acts to apprentices upon whose binding out no larger sum than 25*l.* had been or should be paid. The 4 Geo. 4, c. 34, reciting this act, in which this distinction is so plainly marked, maintains throughout the same distinction, in the clearest possible terms. The first section provides for complaints by a master or mistress against any apprentice within the meaning of the said recited act. The second section also relates to apprentices, giving to them a summary remedy for their wages not exceeding 10*l.* The third section takes up the case of servants working under contract, and describes them in this way: "That if any servant in husbandry, or any artificer, calico printer," and it enumerates a great variety of other trades, "or other person, shall contract with any person or persons whomsoever, to serve him, her, or them, for any time or times whatsoever, or in any other manner," and then it gives summary jurisdiction to the magistrates, to punish such servants breaking such contract, or being guilty of any misconduct in the execution thereof. The fourth section providing a remedy for wages unpaid when the party to pay is absent, applies to both classes; and, therefore, in describing the parties to be paid, it repeats the description in the third section, but adds to it, "and apprentices;" and in describing the parties liable to pay, it describes them as "masters and mistresses, or employers," the first evidently applying to the masters of apprentices, and the latter to the employer of servants.

The appellants, however, receiving instruc-

tions to proceed against two apprentices, wholly neglected the first section, and founded the petition exclusively upon the third section, which they set out in the petition; and then stating the indentures of apprenticeship, and that the apprentice had absented himself, and had neglected his service and duty, as an apprentice and servant as aforesaid, they concluded by averring that he had contravened the statute before recited. They, therefore, relied on the third section, which does not relate to apprentices at all. From this error, in founding the petition upon the third section instead of the first, the whole evil has arisen; and as I have before observed, the appellants cannot now dispute that such evil has been the necessary legal consequence of such error, and that the respondents have been thereby exposed to the damages and expenses which they have paid to the apprentices.

Looking, therefore, to the case against the apprentices, which the respondents were instructed to conduct, and by the act under which they proceeded, it does appear to me to be a case of very great negligence; which term I deem more applicable than ignorance, the appellants' case being, that they were led into the error by following the example of another professional agent of the respondents, who had adopted the same course, and thereby involved his employers in the same difficulty, and exposed himself to the same responsibility. It was the duty of the appellants to look with their own eyes, and judge with their own understandings; and if, instead of doing so, they have blindly followed the erroneous course taken by another agent, they cannot complain of being made responsible for the consequences of the error into which this false guide led them. Their employers had a right to their diligence, their knowledge, and their skill; and whether they had not so much of these qualities as they were bound to have, or, having them, neglected to employ them, the law properly makes them liable for the loss which has accrued to their employers.

Another ground of defence is, that the point having been raised in the case of *Cronkshank*, the justice who heard the point argued, was of opinion that the third section was the one applicable to the case. This circumstance, if there had been any real doubt upon the construction of the act, might possibly have induced the Court to consider whether there was sufficient opening for the adopted construction to operate as an excuse for the appellants; but the case appears to me to be too clear for any such construction. Besides, as was observed by some of the Judges below, the cause of action by the apprentices had already arisen, as they had been apprehended, and were then in custody. I cannot, however, but express my surprise at the opinion imputed to the sheriff-substitute, that the 10 Geo. 4, c. 52, has the effect of making all the provisions of the act referred to applicable to apprentices; whereas the obvious intention and construction of the act is only to extend the provisions of the 4 Geo. 4, c. 34, to persons engaged in certain other descriptions of business, as if

such other descriptions of business had been particularly mentioned in it, leaving the distinction untouched, between such of those provisions as related to apprentices, and such as related to servants; and, *reddendo singula singulis*, applying the separate provisions, as to apprentices and as to servants, to apprentices and servants in the additional description of trades.

Professional men, possessed of a reasonable portion of information and skill, according to the duties they undertake to perform, and exercising what they so possess with reasonable care and diligence in the affairs of their employers, certainly ought not to be held liable for errors in judgment, whether in matters of law or discretion. Every case, therefore, ought to depend upon its own peculiar circumstances; and when an injury has been sustained which could not have arisen except from the want of such reasonable skill and diligence, or the absence of the employment of either on the part of the attorney, the law holds him liable. In undertaking the clients' business, he undertakes for the existence, and for the due employment of these qualities, and receives the price of them. Such is the principle of the law of England, and that of Scotland does not vary from it. I think this case clearly within the principle. I must observe, that it is one in which your Lordships would not be disposed to disturb the judgment of the Court below, without a clear case of miscarriage in that Court.

There is no principle of law in dispute here. The only question is, as to its application to the facts of the case; that is to say, the amount of information and skill and care to be expected from a particular class of professional men in Scotland—a subject upon which the Judges of the Court of Session have much better means of information than your Lordships can possibly possess. If there was any doubt upon this point in the present case, your Lordships would, of course, be disposed to give a great weight to the opinion of the Judges of the Court of Session; but that is not the ground upon which the advice I shall give your Lordships is founded, being of opinion that there was clearly a want of that reasonable degree—if not of information and skill—at least of care and diligence, which is required to save professional men from the liability to indemnify their employers against the consequences of any error they may commit. It is much to be regretted that the appellants did not see their liability, and discharge the obligation which they had fairly incurred, when that might have been done at the trifling expence of the two sums of 25*l.*, which the apprentices have received. Heavy expences have been incurred in the Court below, which have been necessarily added to the charge upon the appellants, and to which I am now compelled to advise your Lordships to add the costs of this appeal. I therefore move your Lordships that the interlocutors appealed from be affirmed with costs. *Hart and Hodge*, appellants; *Frame, Son, & Co.*, 4 Clark & Fin. 193.

"THE GRANDEUR OF THE LAW."

To the Editor of the Legal Observer.

Sir,

I HAVE recently amused a few leisure hours in extracting from the list of the present House of Lords the names of those noblemen whose ancestors have occupied the JUDICIAL SEAT, and in adding some short notices relative to the eminent individuals with whom or in whose families their titles have originated.

Your exertions (and I have watched them from the commencement) having been always devoted to the advancement of the legal profession, to the promotion of its interests, and particularly to the encouragement of its juvenile aspirants, I am led to think that you will not consider that an uninteresting inquiry which tends to excite the industrious scholar to a prosecution of his labours, by exalting the study in which he is engaged, and by exhibiting to his view, as a possible reward for his perseverance, an object of legitimate ambition.

To those also of your readers who are of a more sedate age, and whose aspirations are limited within more moderate bounds, I am inclined to believe that the investigation may not be without interest: and that it will be looked upon as an historical and political curiosity, that so large a proportion of the nobility of this country should have owed their peerages, directly or indirectly, to the profession of the law.

If then you think, Sir, that my memoranda will be useful to the one class, or agreeable to the other, you are at liberty to insert them in your pages; in which, at all events, they will form an entertaining variety, and assist in enlivening the more solemn and important discussions in which, especially at the present time, your excellent work must be necessarily employed.

In the year 1684, Mr. H. Philipps published a little work upon the same subject, called "The Grandeur of the Law;"* a title I have therefore adopted at the head of this letter. It professed, however, to be little more than "an exact collection of the nobility and gentry" deriving their honors and estates from the practice of the law; and furnished no other particulars of the legal ancestor than the office which he held, and the period in which he flourished. The extent of the information given by the author on these points may be judged of by the fact, that his observations on "the nobility" are all contained in thirty-one widely printed pages of a small 12mo volume.

Although my notices of these illustrious individuals are of a somewhat more extended nature, I beg it to be understood that they by no means aim at the character of biography. They are confined to such particulars merely as will justify the introduction of their names into the position in which I have placed them, and are rather intended to lead to, than to satisfy, inquiry.

The present pages have indeed been written as a relaxation from the weightier labours of a larger work, in which I have for many years been engaged, and which is considerably advanced. In that I hope to be able to give some account of every Judge who has sat upon the Bench from the time of William the Conqueror, and to collect together many of those incidents connected with the administration of the law, which, though not weighty enough to be solemnly recorded in the Reports of the time, are dispersed over

* In the Library of the Law Institution is a work entitled "A Treatise enumerating the most illustrious Families of England who have been raised to honour and wealth by the Profession of the Law," 1686. This is merely a

re-issue, by the same bookseller, of the same book as that mentioned in the above letter, with a new title-page, and the addition at the end of a Catalogue of the Chief Justices and Chief Barons.

various documents, and are curious both to the antiquary and the modern professor, as illustrative of the history of past periods, and explanatory of modern customs.

Many of your readers and correspondents can no doubt assist me in my researches ; and I shall feel truly obliged to them, if they will favour me with any communications, and to you, if you will allow those communications to be addressed to me "to your care."

I am, Sir,

Your obedient servant,

F. S. A.

Dukes.

1. HENRY CHARLES HOWARD, Duke of Norfolk, Earl Marshal and Hereditary Marshal of England, Earl of Arundel, Surrey and Norfolk ; Baron Fitz-alan, Clan and Oswaldestre, and Maltravers.

The family of the Premier English Duke owes its aggrandisement to the profession of the law, and deduces its origin from Sir William Howard, a Judge in the reigns of Edward I. and Edward II.

The Father and Grandfather of Sir William Howard, according to the late Mr. Howard of Corby's Memorials of the family, were resident in the reign of Henry III. at Terrington and Wiggenhall, near Lynn, in Norfolk. They appear to have been private gentlemen of small estate, living at home, intermarrying with their neighbours, and witnessing each others' deeds of conveyance and contracts.

Sir William Howard (or Haward, as the name was sometimes spelled) is first mentioned in Dugdale's *Chronica Series*, as a Judge of Assize into Yorkshire, Northumberland, Westmorland, Cumberland, Lancashire, Nottinghamshire, and Derbyshire in 21 Edward I. (1293.) In 25 Edward I. (1297,) he was appointed one of the Judges of the Common Bench, and so continued during the remainder of that king's reign. On the accession of Edward II. (1307) his appointment was renewed ; and he continued to exercise his judicial functions until his death, which occurred in the next year (2 Edward II). He was probably buried at East Winch near Lynn, in a chapel built by himself adjoining the church there, which is now entirely ruined.

Collins, in his *Peerage*, calls him Chief Justice of England ; but there does not seem to be any authority for thus distinguishing him, except that he is so described under a portrait

of him in the window of the church at Long Melford, in Suffolk. This window, however, was not set up there earlier than the reign of Henry IV., and therefore, cannot, without other evidence, be accepted as proof of such a fact.

By his reputation and success in his profession, he was enabled gradually to augment his paternal Estate, by purchases in East Winch, Wiggenhall and other neighbouring townships ; so that the family rose into greater consequence and notice.

He married twice. His first wife was the daughter of Sir Robert Ufford, the ancestor of the family, which afterwards became Earls of Suffolk. By her he had no issue. His second wife was Alice, the daughter of Sir Edmund de Fitton or Phitton, of Pitton, in Wiggenhall, St. Germans, which she afterwards inherited. By her he had two Sons ; from the elder of whom, Sir John Howard, Gentleman of the Bedchamber, Sheriff of Norfolk and Suffolk, from the 12th to 15th Edward II., Governor of Norwich Castle, and Commissioner of Array in Norfolk, in regular descent, came John Howard, the first Duke of Norfolk of that family, who was advanced to that dignity in 1483, by Richard III.

See also the Earls of Suffolk and Berkshire, of Carlisle, and of Edingham.

2. WILLIAM SPENCER-CAVENDISH, Duke of Devonshire, Marquess of Hartington, Earl of Devonshire, Baron Clifford, and Baron Cavendish of Hardwick.

This amiable nobleman is descended from Sir John de Cavendish, Lord Chief Justice of the King's Bench in the reigns of Edward III. and Richard II.

The original name of the family was Ger-non, who were persons of property and note

in the Counties of Norfolk and Essex.^b The name of Cavendish was taken in consequence of the acquisition of the Lordship of Cavendish-Overhall, in Suffolk. But whether this manor was obtained by the marriage of the Chief Justice with Alice, daughter and heir of John de Odyneles, or by that of Roger de Gernon his Father, with the heiress of John de Pottou, Lord of Cavendish, has been disputed.

Dugdale gives the name of John de Cavendish, as Chief Justice of the King's Bench in 39 Edward III. (1365-6): but in 45 Edward III. (1371,) he is mentioned as a Judge of the Common Pleas; and in the next year (1372), he appears to be again appointed Chief Justice of the King's Bench, in which capacity he opened the Parliament in October 1372, in November 1373—in February 1376—and in October 1378, 2 Richard II., his Patent having been renewed on the accession of that king with a grant of 100 marks per annum. It may be doubted, therefore, whether there is not

^b There are two Justices Itinerant in the reigns of Henry II. and Henry III., called Adam de Gernemue and Ralph Gernum, which I have reason to believe are the same name; but whether of this family I am uncertain.

some error as to his having filled the superior office in 39 Edward III. (1365.)

In 4 Richard II. he was elected Chancellor of the University of Cambridge. Soon after the insurrection of Wat Tyler, who was killed in Smithfield by the hand of John Cavendish the Judge's son, the people rose in various parts of the kingdom, and the Norfolk and Suffolk men, under the conduct of Jack Straw, committed excessive devastations. They proceeded in a body of nearly 50,000 persons to the Judge's mansion at Cavendish, which they plundered and burnt. They dragged the venerable Judge into the Market place at Bury St. Edmunds, and there beheaded him (1382,) and fixed his head on the pillory.

By his wife Alice, he had a daughter and two sons; from one of whom, John, (who killed Wat Tyler) lineally descended Sir William Cavendish, who was Gentleman Usher to Cardinal Wolsey. His son William was enobled, being by James I. created, first, Baron Cavendish, and afterwards Earl of Devonshire. The Dukedom was added by William and Mary, in 1694.

A second Dukedom, that of Cavendish, Duke of Newcastle, which is now extinct, was derived from the same origin.

SUMMARY OF RECENT DECISIONS.

We continue our Summary of Decisions with Notes, and shall, at the end of next month, give a list of all the Cases reported or cited in the present volume, in a form that we trust will be found useful; with a full Table of Contents and General Index.

ACTION, FORM OF.

The plaintiff having purchased of the defendant his right to damages in a certain cause pending, the agreement was ratified by a deed of assignment; the defendant was sent by the plaintiff to receive the amount of the verdict and costs, and retained it: Held, that the money was recoverable in an action of assumpsit for money had and received. *Smith v. Jones*, 334.

AFFIDAVIT.

The Court of Q. B. will not permit an affidavit, sworn before a commissioner of the Court of Exchequer, to be used in a matter pending in the Q. B. *Shaw v. Perkins*, 414.

See *Houlden v. Fasson*, 6 Bing. 236.

AGREEMENT (CONSTRUCTION OF).

Where an assured deposited a policy with his creditor, accompanied by a memorandum stating that he "would leave it in his hands as a collateral security, and that he *would assign* the same at his expense," and it appeared that the policy expressly provided for the case of an assignment: Held, that this was an equitable assignment sufficient to charge the defendants to the extent of the assignees' interest, without any formally executed deed, and was within the condition of the policy. *Cook v. Black*, 331.

APOTHECARY.

In an action by a chemist for medicine and attendances, the question for the jury is not the character in which the plaintiff charges, but in which he acts; it being suggested that the charges made are within the Apothecaries' Act, 55 G. 3, c. 194, s. 14. *Richmond v. Colca*, 413.

See *Morgan v. Ruddock*, 4 Dowl. 311; *Lane v. Glenney*, 4 Nev. & P. 358; *Sherwood v. Way*, 5 Ad. & E. 383.

ATTORNEY.

Wherever an attorney is professionally con-

sulted by a client in respect of any business, all the communications that pass between them relating to that business are privileged; and it is not material whether these communications had reference to a cause or not. *Herring v. Cleobury*, 362.

See *Cromache v. Heathcote*, 2 Bro. & B. 4; *Walker v. Wildman*, 6 Mod. 47; *Williams v. Mudie*, 1 Car. & P. 158; *Wordsworth v. Henshaw*, 2 Bro. & B. 5; *Shallard v. Harris*, 5 Car. & P. 592; *Greenough v. Gaskell*, 1 M. & K. 98; *Duff v. Smith*, Penke, 140; and *Du Burre v. Levette*, 1b. 108.

CHARITY.

A bequest to the poor of a particular parish, is not satisfied by payment of the money to the trustees of a dispensary instituted for the medical relief of the poor of that parish and others "adjoining," but will be directed to be applied for the benefit of the deserving poor of the parish named by the testatrix, not receiving parochial assistance. *Attorney General v. Brandreth*, 397.

CONSTRUCTION OF CHANCERY ORDERS.

1. The copy of a bill served on a defendant under the 23d Order of August, need not be an office copy. *Anon.* 396.

2. It was not meant by the 23d and 24th Orders that the prayer that the party served may be bound, should be inserted in any particular part of the bill.

Sed, in future it should be repeated in the prayer of process, and in the general prayer of the bill. *Gibson v. Huines*, 411.

3. The affidavit of service under the 24th Order, must specify that the copy of the bill did not contain the interrogatory part, and an examined copy will be sufficient, even though the bill may not have been filed at the time the copy was made. *Gibson v. Huines*, 398.

DISTRESS.

A., the tenant for life of certain premises, granted to *B.* an annuity for *A.*'s life, charged on those premises, and empowered him to distrain for arrears of the annuity, "in the same manner as the law directs in cases of rent in arrear;" Held that *B.* might justify under a right of distress as for rent, and could claim the benefit of the statutes passed for the protection of landlords.

A grantee of a rent-charge is a person having rent due to him on a contract within the terms 2 W. & M. sess. 1, c. 5.

The grantee may distrain the goods of a person who is in as tenant of the grantor.

If such tenant is in by a title previous or paramount to the grant, he must plead it. *Johnson v. Faulkner*, 364.

See *Wilson v. Duckett*, 2 Mod. 61; *Cooper v. Pollard*, Sir W. Jones, 197; *Miller v. Green*, 2 Cr. & J. 143; 8 Bing. 92; *Bullard v. Harrison*, 4 Mau. & Sel. 392; *Saffery v. Elgood*, 1 A. & E. 191; *Ferguson v. Mitchell*, 2 C. M. & R. 687; *Spyer v. Thelwall*, 1b. 692; *Howell v. Bell*, 3 Salk. 136.

EJECTMENT.

1. The Court granted a rule *nisi* for judg-

ment against the casual ejector, where it was sworn that service had been effected upon the mother-in-law of the tenant on the premises, the wife of the tenant having since admitted that the papers had been handed to her. *Doe d. Morgan v. Roe*, 414.

2. Where a tenant in possession intimates that a service on the son on the premises has come to his knowledge, it is sufficient for a rule *nisi* for judgment against the casual ejector. *Doe d. Brickfield v. Roe*, 414.

ESCAPE.

A prisoner arrested in Hampshire was transferred by *habens corpus* to the custody of the marshal of the Queen's Bench, and afterwards, by a *habens corpus cum causa*, to Newgate, to answer in the Central Criminal Court a charge of perjury. He afterwards procured bail on this charge, and then was taken, without any legal authority to the Queen's Bench prison, where, after some hesitation, he was received. He afterwards escaped: Held, that the defendant was not liable to an action of escape, as the defendant had not the man in legal custody, and consequently could have no right to detain him. The escape was complete in law when the man was removed from Newgate. *Brown v. Chapman, Esq.*, 412.

See *Bonthman v. Earl Surrey*, 2 T. R. 5; and *Bac. Ab. Tit. Escape*.

INDICTMENT.

In an indictment charging the defendant with indecent exposure of his person, with intent, &c. the Court refused to compel the prosecutor to declare in the first instance what were the acts intended to be relied on as constituting the substantive offence, and what were merely to be proved as evidence of intent.

Recognizances on a *certiorari* should bind the defendant to receive judgment on the day of the trial, if it is intended to move for judgment in that way. *The Queen v. Albert*, 332.

INFANT.

Where it is sought to obtain security for costs from the next friend, in whose name an infant sues, upon the ground that he cannot be found at the address of which he is described, the proper course of proceeding is to take out a summons before a judge at chambers, for a stay of proceedings until his residence is properly pointed out. *Hayes v. Carr*, 367.

And see *Yarworth v. Mitchell*, 2 D. & R. 423; *Watson v. Fraser*, 9 Dowl. 741.

MANDAMUS.

An indictment having been found at quarter sessions against a defendant for keeping a gaming house, and the chairman at sessions having refused to grant process against the defendant, on the ground of the length of time which had elapsed between the finding of the indictment and the application, the Court refused to grant a *mandamus* to the chairman,

requiring him to issue such process. *Reg. v. Russell*, 413.

MARRIED WOMAN.

If husband and wife be domiciled in Scotland, and the wife be possessed of choses in action in England, the husband's representatives will, on his death, leaving her surviving, become entitled to them, although all the transactions connected with them may have taken place in England. *Smith v. Muckie*, 331.

PLEADING.

1. Where a fact is not necessarily within the knowledge of a defendant, and he is capable of availing himself of it by plea, he is not required to make a positive averment of such fact, but may state that he is informed and believes it to be so. *Kirkman v. Andrews*, 397.

See *Anon.* 3 Atk. 70; *Drew v. Drew*, 1 Ves. & B. 162.

2. Where pleas have been pleaded under an order of a judge, no rule for striking them out can be discussed; but the plaintiff must in the first instance move to set aside the order. *Colnaghi v. Warne*, 398.

3. To an action of trespass *q. c. f.*, the defendant justified under one *G. B.*, whose title was set out, and whose servant he was. Replication, that an agreement had been entered into with the defendant, as agent of *B.*, by which the close was demised to the plaintiff for a term yet unexpired. Rejoinder, that *B.* had not demised to the plaintiff: Held, upon general demurrer, that the traverse was good. *Wilkins v. Boucher*, 334.

See *Brdell v. Lill*, Yelv. 151; *Cross v. Hunt*, Carth. 99.

4. It is not a variance between the declaration and process, that in the former the plaintiff is described "executor," but not suing "as executor," and in the latter generally, without any allusion to his representative capacity. *Free v. White*, 333.

See *Anon.* 1 Dowl. 97.

5. In an action on a joint and several promissory note against one defendant, the plea alleged that the defendant had made the note, together with one *G. W.*, and as security for him to the plaintiff for the amount thereof, and without consideration: Held, upon demurrer to the replication, putting in issue the fact of consideration, that the action was well conceived in debt. *Sison v. Kidman*, 333.

And see *Foster v. Jolly*, 5 Tyr. 244; *Clark v. Wilson*, 3 M. & W. 208; *Abbott v. Hendricks*, 1 Man. & G. 791; *Priddy v. Henbry*, 1 B. & C. 675; *Evans v. Jones*, 5 M. & W. 295.

6. In an action on the case for disturbance of a pew claimed in right of occupation of a house, the defendant pleaded; first, Not Guilty; secondly, that the plaintiff had not a right to the use of the pew as appurtenant to the house in question. The defendant afterwards sought to add a plea, that the plaintiff was not possessed of the house in question, but the Court refused him leave to plead this additional plea. *Pepper v. Barnard*, 398.

See *Murray v. Boucher*, 9 Dowl. 537.

PRACTICE (EQUITY).

1. If a decree is fully set forth by way of recital in an inrolment, it is not necessary to the validity of the inrolment to state the decree again.

The inrolment of a decree or order pronounced by the *Vice Chancellor* is not irregular for want of the *Vice Chancellor's* signature to the docket; it is sufficient if the *Lord Chancellor* has signed it. *Secus* as to a decree or order of the *Master of the Rolls*. *Dermot v. Keeley*, 419.

And see *Parker v. Downing*, 1 M. & K. 634; *Smith v. Clay*, Amb. 645; 3 Bro. C. C. 639; *Brooke v. Champernown*, 4 Clark & F. 247.

2. *Semble*. Where a sole plaintiff dies and the suit is not revived within a reasonable time, the defendant may move that the suit be revived within a given time or dismissed. *Canham v. Vincent*, 411.

And see *Canham v. Vincent*, 8 Sim. 277.

3. Six weeks having elapsed since obtaining an order for the production or inspection of documents, and before amendment of bill: Held, that the plaintiff had not used reasonable diligence, and was not entitled to indulgence, unless he could by affidavit explain his delay. *Pearce v. Cresswick*, 363.

PRACTICE (COMMON LAW).

1. Where it is sought to set aside a demurrer to a replication, on the ground that it is frivolous, the rule must be drawn up on reading the replication. *Daniel v. Lewis*, 414.

2. The Court will not, after a special verdict has been argued and decided, permit the case to be reheard on any additional statement of facts. *Sanders v. Fanzeller*, 332.

3. It is not a sufficient service of a rule to compute on a publican, that it has been left with "a person in the bar." *Munroe v. Reader*, 333.

4. The *venire facias juratores* may, since the passing of the 3 & 4 W. 4, c. 67, s. 2, be made returnable "forthwith" or on a day certain. *Drake v. Gough*, 399.

5. Notice of declaration was served on the 30th October, the 31st was a Sunday. It was held to be too late to move to set the notice aside on the 4th November. *Willis v. Bull*, 366.

PRODUCTION OF DOCUMENTS.

1. Where a bill is filed to redeem a mortgage, the plaintiff is not entitled to the production of the title deeds, or mortgage. *Secus* as to the mortgage, if the object of the bill is to impeach it. *Thunder v. Verrall*, 363.

2. In a suit instituted for the purpose of setting aside conveyances, alleged by the bill to have been fraudulently obtained, the Court will, on the application of the plaintiff, order their production if admitted by the answer to be in the defendant's possession, although the allegations of fraud are denied, provided sufficient appears upon the face of the answer to make out a case of suspicion. *Basford v. Blackley*, 362.

See *Tyler v. Drayton*, 2 S. & S. 309.

REFERENCE.

A cause being referred upon the terms that the costs of the cause should abide the event of the award, and the costs of the reference be in the discretion of the arbitrator, and an award being made in favor of the plaintiff, the defendant being ordered to pay the costs of the reference, the plaintiff's entire claim for costs was taxed by the master, and an *allocatur* made on the 4th June, comprising the amounts of the costs of the cause and of the reference, and judgment was signed for both sums on the same day; the plaintiff subsequently died on the 18th November, and a *sci. fu.* was sued out on the 12th January, to which the defendant pleaded on the 19th: Held, that on the 24th it was incompetent to the defendant to object to the alleged falsity of the judgment, on the ground of its including not only the costs of the cause, but of the reference also. *Bignall v. Gall*, 414.

And see *Sloman v. Gregory*, 1 D. & R. 181.

STAMP.

The matter of an agreement to let premises for a certain period at a specific sum of 10*l.*, cannot be considered as of the value of 20*l.*, and therefore does not require a stamp. *Murlew v. Thompson*, 399.

TRUSTEES.

The trustees of charities that were vested in the bodies corporate in boroughs before the act 5 & 6 W. 4, for regulating municipal corporations, are entitled to service of a petition for the appointment of new trustees; and their clerk, where such trustees have a clerk, is the proper person to be served. *Re Gloucester Charities*, 330.

VENDOR AND PURCHASER.

Where a decree is taken by consent for the sale of an estate, and it afterwards appears that two married women, who were parties to the cause, had joined in the consent without having answered separately, or apart from their husbands, the purchaser can object to the validity of the decree on a motion to have the purchase money brought into court.

The production of probate is sufficient evidence of the proof of a will, to pass copyholds. *Taylor v. Martindale*, 330.

And see *Bennett v. Hammill*, 2 Sch. & Lef. 576; *Lechmere v. Brazier*, 2 J. & W. 287.

WILL.

1. Where a testatrix by her will and codicil devised an estate upon certain trusts, and subsequently entered into a contract for sale of such estate, but died before the contract was completed: Held, that, according to the true construction of the last Will Act, the purchase money belonged to the personal representatives of the testatrix, and not to the devisees named in her will. *Farrer v. Earl M'Interton*, 401.

2. Bequest of stock to trustees, to pay dividends to husband and wife, and the survivor of them for life, and after death of survivor, to pay the capital to their children in such shares as the survivor of husband and wife should

appoint by his or her last will: Held, that the power could only be exercised in favor of such of the children as should be living at the death of the survivor. *Woodcock v. Renneck*, 396.

And see 22 L. O. 462; *Mudoc v. Jackson*, 2 Bro. C. C. 583; *Hockley v. Maubey*, 1 Ves. jun., 150; *Vanderzel v. Aclom*, 4 Ves. 771; *Casterton v. Sutherland*, 9 Ves. 445; *Campbell v. Sandys*, 1 Sch. & L. 281; *Brown v. Pocock*, 6 Sim. 257; *Hammersley v. Bray*, 2 Clark & F.

WRIT OF TRIAL.

If a claim made by a plaintiff is for unliquidated damages, the undersheriff has no jurisdiction to try it, although the amount of it is less than 20*l.*, and the particulars state it to be for 7*l.* 10*s.*, and the court set aside the writ, and all subsequent proceedings at the instance of the plaintiff, who had been unsuccessful on the trial, although he had procured the judge's order for the writ of trial. *Lismore v. Beadle*, 366.

LEGAL BIOGRAPHY.

In our obituary at p. 348, *ante*, we noticed, rather too concisely, several deceased Lawyers, and as we are always desirous of doing honor as well to departed as to living excellence, we extract some further particulars from the Gentleman's Magazine*, regarding the following individuals.

FRANCIS PAUL STRATFORD, ESQ.

Mr. Stratford was called to the bar, by the Society of the Middle Temple, June 29, 1781. He was a friend of the late Earl of Eldon, by whom he was appointed a Master in Chancery, and at the period of his retirement he was the senior Master of that Court. Mr. Stratford was the author of two pamphlets on the practice of the Court of Chancery: the first published in 1827, called "The Sovereignty of the Great Seal maintained against the One hundred and eighty-eight Propositions of the Chancery Commissioners, in a Letter to the Lord High Chancellor." The other in 1829, entitled "Strictures on the Orders for the Regulation of the Practice and Proceedings in the Court of Chancery, professing to be issued in pursuance of the Recommendation of his Majesty's Commissioners, by the Lord High Chancellor, 3rd April, 1828. Addressed to the Gentlemen connected with the Court."

Mr. Stratford married Mary, second surviving daughter of the Rev. Charles Dickinson, Rector of Carlton Curliou and Withcote, and Minister of Ouston, county Lancaster. Mr. Stratford died on the 1st of December, 1841, aged 89.

* We do not hesitate resorting to the pages of our worthy contemporary, as in several instances our Memoirs have been at his service.—Ed.

MR. SERJEANT ARABIN.

William St. Julien Arabin, esq., serjeant-at-law, was one of the Judges of the Central Criminal Court, Judge of the Sheriff's Court in London, Deputy Judge Advocate, and one of the Verderers of the forests of Epping and Hainault.

Mr. Serjeant Arabin was the only surviving son of the late General Arabin, at whose demise he succeeded to extensive estates in Middlesex and Essex. He was called to the bar at the Inner Temple, May 8, 1801, when he selected the Home circuit, and practised at the Old Bailey, and other metropolitan sessions. He was called to the degree of Serjeant-at-law in Easter Term, 1824; and about the same time was selected to fill the office of Deputy Judge Advocate of the army. On the 24th of November, 1838, he succeeded Mr. Cutlar Fergusson, as Judge Advocate General of the Army; which office, however, he only retained till the following February, when he retired to make room for Sir George Grey; retaining his former place as Deputy Judge Advocate. When the "New Court," in London, was erected, about 14 years ago, Mr Serjeant Arabin was elected as the 3rd civic Judge, to act in concert with the Recorder and Common Serjeant, and on the jurisdiction of the Central Criminal Court being established, he was made a commissioner, and he continued indefatigable in the discharge of his judicial duties down to the close of the October sessions, after which severe illness prevented him from resuming them. He resided at High Beech, Essex, and was much attached to agricultural pursuits. He died on the 15th of December, 1841, aged 66.

PHILIP COURTENAY, ESQ. Q. C.

Mr. Courtenay, was a member of Trinity College, Cambridge, where he graduated B.A. in 1805, and M.A. in 1808. He was called to the bar at the Inner Temple, July 1, 1808, and afterwards attended the Common Law Court, and went the Northern circuit. He also received the appointment of standing counsel to the Mint. He was promoted to the rank of King's Counsel in Hilary Vacation, 1833. In the last Parliament from 1837 to 1841, he sat for the borough of Bridgewater, and advocated Tory principles.

His death took place under circumstances of a peculiarly distressing character. It appears that he was in the habit of taking medicines without consulting a professional adviser, and that laudanum or some preparation of opium was his favourite dose. Having recently come back from Ireland, where he had been engaged in the transaction of some family business, he was staying at the Adelphi hotel, Liverpool, prior to his return to London. He purchased a phial of solution of acetate of morphia, and a second phial of solution of muriate of morphia, the whole, or the greater portion of both of which, it would seem, he swallowed one night, and the consequence was that death ensued on the following evening. A coroner's jury returned a verdict to the

effect, "That the deceased, intending to take a certain quantity of the medicine, took an over dose, which caused his death." He was 56 years of age.

He was father of Lieut. William Hayley Courtenay, of the 1st Royals, who, with Lord Fitzroy Lennox, Mr. Wykeham Martin, and Mr. Power, the comedian, unhappily perished on board the President steamer, in March last.

Mr. Courtenay was a Benchler of the Inner Temple.

MASTERS EXTRAORDINARY IN CHANCERY.

From 22d February to 18th March, 1842, both inclusive, with dates when gasetted.

Boys, John Harvey, Margate, Kent, March 1.
Bromley, William, jun., Hayling Island, Southampton, March 4.
Carslake, John Hawkey Bingham, Bridgwater, Somerset, March 1.
East, Alfred Baldwin, Birmingham, March 4.
Edmonds, George Maxwell, Oundle, Northampton, February 22.
Gay, William, Wisbeach, Cambridge, March 1.
Gem, Thomas Henry, Birmingham, Feb. 22.
Haslewood, Edward William, Bridgnorth, Salop, February 22.
Marshall, John, Kingston upon Hull, February 25.
Pearse, James, Southmolton, Devon, March 18.
Robinson, Frederick, Hadleigh, Essex, Feb. 25.
Turner, Sayers, Colchester, Essex, March 15.
Vickers, Benjamin, Manchester, Feb. 25.
Watts, John King, St. Ives, Huntingdon, March 4.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 22d February to 18th March, 1842, both inclusive, with dates when gasetted.

Atherton, Nathan, Ebenezer Thomas Clarkson, and Edwin Eugene Whitaker, Calne, Wilts, Solicitors and Attorneys, March 1.

BANKRUPTCIES SUPERSEDED.

From 22d February to 18th March, 1842, both inclusive, with dates when gasetted.

Davies, David, jun., Glancywdog, Llandiloes, Montgomery, Flannel Manufacturer, March 18.
Fothergill, Mark, and Michael Fothergill, Upper Thames Street, London, Drysalters, March 4.
Hetherington, John, King's Arms Yard, London, Wholesale Tea Merchant, March 15.
Hill, Thomas, Bow Church Yard, London, Commission Agent and Factor, March 4.
Needham, Joseph Smith, formerly of Hinckley, but now of Ullesthorpe, Leicester, Banker, Brewer, Coal and Timber Merchant, Feb. 25.
Scudamore, Thomas, Birmingham, Chemist and Druggist, Feb. 25.
Williams, William, and Thomas Hill, Bow Church Yard, London, Linen Drapers, March 4.

BANKRUPTS.

From 22d February to 18th March, 1842, both inclusive, with dates when gasetted.

Alexander, John, Pendleton, Lancaster, Brewer, Milne & Co., Temple; Slater & Co., Manchester, March 15.

- Anderson, John, and William Garrow, Liverpool. Merchants. *Duncan & Co.*, Liverpool; *Adlington & Co.*, Bedford Row. March 18.
- Antrobus, Daniel, Great Budworth, Chester, Salt Merchant. *Saxon*, Northwich; *Cole*, Adelphi Terrace, Strand. March 4.
- Bailey, Edward, Mount Street, Grosvenor Square, Upholster and Cabinet Maker. *Turquand*, Off. Ass.; *Bailey & Co.*, Berners Street. March 1.
- Baldwin, Thomas, Worcester, Innkeeper and Victualler. *Letts*, Bartlett's Buildings, Holborn; *Finch*, Worcester. March 4.
- Banks, Josh. and Josh. Burgess, Manchester, Drapers. *Wills & Co.*, Tokenhouse Yard; *Barrett & Co.*, Manchester. Feb. 22.
- Barnes, William, Shindcliffe, Durham, Fire Brick Manufacturer, Wood Sawyer, and Dealer in Coal Dust. *Maynard*, Durham; or, *Maynard & Co.*, Durham. March 18.
- Bate, Joseph, Dudley, Worcester, Iron Merchant. *Cole*, Adelphi Terrace; *Dalton*, Dudley. Feb. 25.
- Bayntun, Wilmot Robert, Bath, Somerset, Surgeon and Apothecary. *Richards & Co.*, Lincoln's Inn Fields. *Drake*, Bath. March 18.
- Bedford, John Davinson, Burton-upon-Trent, Stafford, Common Brewer. *Richardson*, Burton-upon-Trent; *Hicks & Co.*, Bartlett's Buildings. March 15.
- Bidmead, David, Bread Street, Cheapside, London, Warehouseman and Shipping Agent. *Edwards*, Off. Ass.; *Jones*, Size Lane. March 18.
- Birch, Emily Ann, Bedford Place, Russell Square, Lodging House Keeper and Trader. *Gibson*, Off. Ass.; *Lloyd*, Cheapside, March 11.
- Boggs, Gardner, William Taylor and William Shand, jun., Great Winchester Street, London, Merchants. *Pennell*, Off. Ass.; *Simpson & Co.*, Austin Friars. March 4.
- Bould, Peter, Ovenden, Halifax. York, Cotton Spinner and Manufacturer. *Emmett & Co.*, Bloomsbury Square. Messrs. *Alexander*, Halifax; *Stacks & Co.*, Halifax. March 15.
- Brown, John, Sheffield, York, Merchant and Factor. *Rodgers*, King Street, Cheapside; *Rodgers*, Sheffield. March 1.
- Bury, William, Blackburn, Lancaster, Corn Dealer. *Cushe & Co.*, Southampton Buildings; *Lodge & Co.*, Preston. March 11.
- Byng, William Bateman, Old Windsor, Berks., and of Saffron Walden, Essex, Engineer and Gas Manufacturer. *Johnson*, Off. Ass.; *Nichl*, Walbrook. March 18.
- Clarke, John Perry, and Osmund Lewis, Crown Court, Threadneedle Street, Newspaper and Advertisement Agents. *Belcher*, Off. Ass.; *Clarke*, George Street, Mansion House.—March 11.
- Clent, Thomas, Worcester, Victualler. *Dryden*, Lincoln's Inn Fields. *Cresswell*, Worcester. March 18.
- Cockburn, James, New Broad Street, London, Merchant. *Turquand*, Off. Ass.; *Wilde & Co.*, College Hill, Queen Street, Cheapside. Feb. 22.
- County, James, Cheltenham, Gloucester, Oil and Colourman. *Miller & Co.*, Eastcheap, London. March 11.
- Cozens, Thomas Finch, Canterbury, Builder. *Plummer*, or Messrs. *Furley*, Canterbury; Messrs. *Butterfield & Co.*, Gray's Inn Square. March 15.
- Crighton, John, sen., Manchester, Machine Maker and Cotton Spinner. *Hadfield*, Manchester; *Johnson & Co.*, Temple. March 1.
- Oritchley, John, Liverpool, Bricklayer and Builder. *Sharpe & Co.*, Bedford Row; *Banner*, Liverpool. March 4.
- Dakeyne, Joseph, late of Nottingham, and now of the city of Edinburgh, Lace Dealer. *Smith*, Furnivals Inn. Feb. 25.
- David, John, Laugharne, Carmarthen, Malster, *Holcombe*, Chancery Lane; *Gwynne*, Tenby. Feb. 25.
- Davies, John, Liverpool, Oil Merchant, Drysalter, Saltpetre Refiner, and Merchant. *Holten & Co.*, Liverpool; *Wainley & Co.*, Chancery Lane. Feb. 22.
- Davis, Edward, Bath, Architect. *Frowd*, Essex Street, Strand; Messrs. *Crutwell*, Bath. March 4.
- Dodson, George, Roston, Lincoln, Wool Dealer. *Scott*, Lincoln's Inn Fields; *Millington & Co.* Boston. Feb. 25.
- Donaldson, George, Pall Mall, Watch Maker and Jeweller. *Johnson*, Off. Ass.; *Drake*, Bouverie Street, Fleet Street. Feb. 22.
- Dover, John, Three Cranes Wharf, London, Merchant. *Graham*, Off. Ass.; *Armstrong*, Staple Inn. Feb. 25.
- Emery, Joseph, Wells, Somerset, Surgeon, Chemist, and Druggist. *Jay*, Serjeant's Inn, Fleet Street. March 11.
- Flitcroft, Seth, Liverpool, Ironmonger, and Store Grate Manufacturer. *Tattershall*, Great James Street, Bedford Row; *Hoole & Co.*, Sheffield. Feb. 22.
- Forge, Richard Walrond, Billingsgate, Lower Thames Street, London, Fish Salesman. *Johnson*, Off. Ass.; *Cox*, Size Lane. March 4.
- Frankland, John, and Thomas Frankland, Liverpool, Merchants. *Makinson & Co.*, Temple *Atkinson & Co.*, Manchester. March 15.
- Gandar, Joshua Darwin, Brydges Street, Covent Garden, Victualler. *Pennell*, Off. Ass.; *Heathcote & Co.*, Coleman Street. Feb. 22.
- Gonger, Henry, Great Winchester Street, London, Merchant. *Whitmore*, Off. Ass.; *Simpson & Co.*, Austin Friars. Feb. 25.
- Green, Edward, Clifford Street, Bond Street, Tailor. *Abager*, Off. Ass.; *Bromley*, South Square, Gray's Inn. March 1.
- Hare, Vere, and John Hare, Taunton, Somerset, House and Estate Agents, Painters and Glaziers. *Whitaker*, Gray's Inn Square; *Gillard & Co.*, Bristol; *Trenchard*, Taunton.—Feb. 25.
- Harper, Edward, Steeple Claydon, Buckingham, and of Bicester, Oxford, Grocer and Draper. *Aplin*, Banbury. Feb. 22.
- Harrison, Henry, Manchester, and of Old Broad Street, London, Commission Agent and Merchant. *Scott*, Lincoln's Inn Fields; *Morris*, Manchester. March 4.
- Hart, Philip Woodrow, Norwich, Coach and Gig Manufacturer. *Clarke & Co.*, Lincoln's Inn Fields; *Beckwith & Co.*, Norwich. March 11.
- Holroyd, John, Wheatley near Halifax, York, Cotton Wharf Maker. *Milne & Co.*, Temple; *Caistor & Co.*, Manchester. Feb. 25.
- Hope, John Parkes, Atherstone, Warwick, Builder, Messrs. *Baxter*, Lincoln's Inn Fields; *Baxter*, Atherstone. Feb. 22.
- Horncastle, Joseph, Giamford Briggs, Lincoln, Seed Merchant. *Nicholson & Co.*, Brigg; *Dyneley & Co.*, Bedford Row. March 11.
- Hunt, William Nathan, Watling Street, London, Stationer. *Graham*, Off. Ass.; *Woolker*, Bucklersbury. March 4.
- Hurrell, Thomas, Walthamstow, Essex, Cattle

- Dealer.** *Green, Off. Ass.; Wood, & Co., Corbet Court, Gracechurch Street. Feb. 23.*
- Hutton, John,** Fenchurch Street, London, and of Myddleton Square, Clerkenwell, Middlesex, Merchant. *Gibson, Off. Ass.; Sharpe & Co., Bedford Row. March 1.*
- Jackson, Samuel, and Thomas Frederick Jackson,** Bermondsey Street, Surrey, Woolstaplers. *Green, Off. Ass.; Watts, Bermondsey Street. March 11.*
- Jones, John,** Liverpool, Cordwainer and Victualler. *Cornthwaite, Dean's Court, Doctors Commons, Cornthwaite, Liverpool. March 15.*
- Lamprell, Richard,** Sherborne Lane, London, Builder. *Edwards, Off. Ass.; Sandell, Bread Street, Cheapside. Feb. 25.*
- Lloyd, William,** Liverpool, Wine and Spirit Merchant. *Whitely, Liverpool; Lowe & Co., Southampton Buildings, Chancery Lane. March 15.*
- Mac Leod, William,** Coleman Street Buildings, London, Merchant. *Graham, Off. Ass.; Wilde & Co., College Hill. March 18.*
- Mason, Thomas,** Stowford Mills, Harford, Devon, Miller. *Surr, Lombard Street; Lochyer & Co., Plymouth. March 1.*
- Matthews, John,** Ledbury, Hereford, Builder. Messrs. *King, Serjeant's Inn, Fleet Street; Ellis & Co., Gloucester; Haywood & Co., Birmingham. March 18.*
- Mills, Robert,** Heywood, Lancaster, Iron Founder, Joiner and Builder. *Johnson, Off. Ass.; Blair, Manchester. March 18.*
- M'Lean, John,** Liverpool, Commission Agent. *Holden & Co., Liverpool; Walmley & Co., Chancery Lane. Feb. 22.*
- Morris, Thomas,** Newbridge, Glamorgan, Grocer and Draper. *White & Co., Bedford Row; Short, Bristol. March 15.*
- Nixon, James,** Great Portland Street, Oxford Street, Upholsterer and Cabinet Maker. *Edwards, Off. Ass.; Tate, Basinghall Street. March 4.*
- Page, Charles,** High Street, Nottingham Mews, Mary-le-Bone, Coach Tyre Smith and Wheelwright. *Pennell, Off. Ass.; Kell, Bedford Row. March 15.*
- Page, Joseph, jun.,** Gloucester, Carrier by Land, and Hallier and Porter Merchant. *Jones & Co., Crosby Square. Smallbridge, Gloucester. March 15.*
- Parbery, John,** Northampton, Saddler and Harness Maker. *Hall, Northampton; Weller, King's Road, Bedford Row. March 15.*
- Parsons, John,** Mansfield, Nottingham, Maltster. *Parsons & Co., Mansfield; Deane Lincoln's Inn Fields. Feb. 22.*
- Partridge, James Birch,** Birmingham, Dealer in Birmingham and Sheffield Wares. *Chaplin, Gray's Inn Square; Harrison, Birmingham. March 4.*
- Peake, Stephen,** Ramsgate, Kent, Builder. *Smith, Barnard's Inn, London. March 15.*
- Piggott, William Rupert,** Goldsmith Street, Wood Street, London, Carpet Warehouseman. *Groom, Off. Ass.; Nias, Cophall Court, Throgmorton Street. March 1.*
- Pilling, John,** Lancaster, Innkeeper. *Mayhew & Co., Carey Street, Lincoln's Inn; Blackhurst & Son, Preston. Feb. 22.*
- Powell, John,** Newcastle-under-Lyme, Stafford, Grocer and Flour Dealer. *Smith, Chancery Lane; Harding, Burslem. March 18.*
- Pratt, Frederick,** Stoke-upon-Trent, Stafford, Mil-
- ler, Stevenson,** Stoke-upon-Trent; *Wilson, Furnival's Inn. March 11.*
- Rigden, John Matson,** Wingham, Kent, Maltster *Egan & Co., Temple; Curteis & Co., Canterbury. March 4.*
- Robinson, William,** Hulme, Manchester, Glass Manufacturer and Brewer. *Milne & Co., Temple; Slater & Co., Manchester; Bagshaw & Co., Manchester. March 11.*
- Rogers, Spencer,** Dale Hall, near Burslem, Stafford, Earthenware Manufacturer. *Milne & Co., Temple; Slater & Co., Manchester. March 1.*
- Slater, William,** Marton, Whitegate, Chester, Banker. *Saxon, Northwich, Cheshire; Cole, Adolph Terrace, Strand. March 4.*
- Smith, John,** Blenheim Street, Bond Street, Mil-liner. *Becher, Off. Ass.; Stephen, Skinner's Place, Size Lane. Feb. 22.*
- Stanway, George,** Stoke-upon-Trent, Stafford, Confectioner, Grocer, and General Provision Dealer. *Smith, Chancery Lane; Harding, Stoke-upon-Trent. March 11.*
- Stephens, Samuel Fox,** Old Broad Street, London, Bill Broker. *Becher, Off. Ass.; Car, Pinner's Hall, Old Broad Street. March 4.*
- Thompson, William,** Princes Street, Spitalfields, Hat Manufacturer. *Alager, Off. Ass.; Crowder & Co., Mansion House Place. March 1.*
- Timbrell, George Poulton,** Philip Lane, Addle Street, London, and of Stourport, Worcester, Worsted Spinner. *Reed & Co., Friday Street, Cheap side; Bunting, Manchester. March 1.*
- Vandergucht, Charles,** Quadrant, Regent Street, Silk Mercer. *Groom, Off. Ass.; Hogard, Paternoster Row. Feb. 22.*
- Watson, John,** Manchester, Muslin Manufacturer. *Kay & Co., Manchester. March 18.*
- Webb, Charles Henry,** Forebridge, Stafford, Corn Dealer. *Clowes & Co., Temple; Hiern & Co., Stafford. March 4.*
- Webster, Edward Shirley,** Birmingham, Draper. *Reed & Co., Cheapside. March 11.*
- Wheeler, Frederick Augustus,** Birmingham, Percussion Cap Manufacturer. *Chaplin, Gray's Inn Square; Harrison, Birmingham. Mar. 18.*
- Wigney, Isaac Newton,** and Clement Wigney, Brighton, Sussex, Bankers. *Palmer & Co., Bedford Row. March 11.*
- Wright, Thomas Whyler,** and George William Hyde, Nottingham, Dyers. *Yallop, Fornival's Inn; Messrs. Parsons, Nottingham. Mar. 18.*
- Wright, John,** Birmingham, Cabinet Maker and Upholsterer. *Whitehouse, Chancery Lane. March 4.*

PRICES OF STOCKS.

Tuesday 22d March, 1842.

3 per Cent. Consols Ann. -	89½ a ½ a ½ a ½
New 3½ per Cent. Annuities -	95½ a ½ a 9 a ½
India Bonds 3½ per Cent. -	9s. a 11s. pm.
Bank Stock for opening 14 April -	169½
3 per C. Cons. for Account 14th April -	89½
Exchequer Bills 1000l. a 2½d. -	30s. a 28s. pm.
Ditto 500l. do. -	28s. a 30s. pm.
Ditto Small do. -	30s. a 28s. pm.

The Legal Observer.

SATURDAY, APRIL 2, 1842.

—“ Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LOCAL COURTS AND THE INCOME TAX.

Two months—two busy months have now passed since Parliament assembled, and certainly, although not a great deal has been accomplished, sufficient has been projected. A time more important to the profession—a period more crowded with events, we never remember. It is sufficient for us, on the present occasion, to make a few observations on two of the many subjects now before Parliament—Local Courts and the Income Tax.

If the first bill pass into law, the great principle of centralization in the administration of justice will be broken up, and instead of cases being decided on a uniform principle, by persons who have the opportunity of communicating with each other, and of knowing the most approved rule on all subjects, a class of small judges will spring up all over the country, who will each superinduce his own notions on the existing system, and render the knowledge of the law as a science next to impossible. We shall have Devonshire law and Yorkshire law, just as at a former period of our history we had *Mercen lage* and *Dane lage*, and thus the whole endeavours of succeeding times, but more especially of the last half century, to render the law uniform throughout the country, will be frustrated for ever. While this great measure is impending over us, comes another which seizes on a large portion of the reduced income which it would leave us to ourselves. Having sustained for many years “the pelting of the pitiless storm;” having seen, year after year, our fair earnings di-

minished, thus straitened and impoverished, we are at the same moment told that we must submit to one measure which attacks the very foundation of the administration of justice, and to another which, while it extorts from us an exposure of our distressed condition, wrenches from us a portion of our remaining pittance. We are not prepared tamely to submit to all this hardship. It is our duty, in this breathing-time which is given to us, ere these measures pass into law, to express the general feeling respecting them. We wish to do this with all respect—with all calmness, but we will not be awed, either by the imposing front arrayed against us; or by the consideration, that it is from our friends that we are required to receive this bitter potion. We certainly will not submit to either one or other of these measures without protesting against them, without doing what we can to prevent their passing, and endeavouring at all events, to obtain some modification of their enactments.

It may be said, indeed, that we are very selfish and interested in our opposition; that we are simply defending our own pockets. We are willing, however unjustly, to submit to this charge. We say we have borne for many years the heat and burthen of the fight, with scarcely a murmur. We are not disposed to see the small residue left to us, taken away from us without a single word in our own defence. It has been shown, over and over again, that if a fair remuneration is not allowed to the members of the profession, the public in general are the sufferers. We would only ask any non-professional reader to consider the amount of responsibility daily entrusted

to the lawyer, and then, in common fairness, to consider whether he is at present overpaid. Try the profession by any test, applied to any other calling. Is it in numbers, in talent, in station, in actual capital, inferior? And yet do not all other grades examine all measures by their operation on their own interests? What farmer, what manufacturer, what surgeon, what clergyman scruples to avow boldly his dislike to any particular measure as injurious in his opinion to his own especial interests. But if the lawyer ventures to take this ground, no words can be found with some to express their indignation at his selfishness. He alone, forsooth, must be sacrificed without a murmur on his part... He must be ready without a sigh, to offer himself at all times for the good of his country. What are his profits, that they should be protected? What are his early up-risings and late toilings, that they are to be considered? What are his toilsome hours, his anxieties, his watchings, his fastings? Who values his long years of labour, or his income gained inch by inch in the teeth of a thousand competitors? Who cares for his "young barbarians?" Why is his capital to be protected? The tiller of the soil, the manufacturer, the tradesman, or merchant, of whatever class, may meet openly and complain directly, but the lawyer must quietly submit, and be thankful that he is spared at all, and left the privilege of maintaining the law, and assisting every other class of the state in obtaining and preserving their just rights.

This is very much the kind of doctrine which we hear laid down in some quarters, but more especially with reference to Local Courts. We are not prepared to admit it; further, we do not think there is any necessity in submitting to it when reduced to practice, if the profession will only awake to their own rights. We object to Local Courts, because they are injurious to the common-weal; we object to them further, because they are injurious to the profession. We object to an income tax levied to an equal amount on income derived from professions and trades, and on property; because it is injurious to the common-weal, and furthermore, because it is injurious to the profession. We do not hesitate to avow this, and we are ready to do battle on this broad ground.

We conclude these remarks in the language of Meg Merrilies, which we venture to address to Sir Robert Peel should he persist in the unmitigated income law—

"Ride your ways, ride your ways, Laird of

Ellangowan! Ride your ways, Godfrey Bertram! This day have ye quenched seven smoking hearths, see if the fire in your ain parlour burn the blither for that. Ye have riven the thack off seven cottar-houses—look if your ain roof-tree stand the faster. Ye may stable your stirks in the shealings at Durncleugh—see that the hare does not couch on the hearthstane at Ellangowan."

POINTS IN CRIMINAL LAW.

STEALING POTATOES.

By stat. 6 Geo. 3, c. 48, and 13 Geo. 3, c. 33, the stealing of any root, shrub, or plant, by day or night, was subject to pecuniary penalties for the two first offences; and for the third was constituted a felony, liable to transportation for seven years; but these statutes are repealed by stat. 7 & 8 Geo. 4, c. 27; and the offence is now by stat. 7 & 8 Geo. 4, c. 29, ss. 38 & 39, if the injury is felony, punishable as larceny.

A police officer found N. with potatoes under his shirt, which had been recently dug from the ground, and apprehended him. The policeman called O. to assist him; O. did so, and a rescue being attempted O. was going away and was struck by A., who went away; and O. was afterwards killed by other persons, who attempted the rescue. Mr. Justice Colman said to the jury, "You will be relieved from inquiring into the charge of murder, because an irregularity has taken place in the conduct of the policeman in the first instance. In law he had no right to apprehend a person on suspicion of having stolen growing potatoes out of a garden, as the law does not regard such an offence as felony, unless indeed the person had been previously fined before a magistrate for a similar offence. Had the potatoes been stolen from a place of deposit, such as a storehouse or warehouse the case would have been very different. *Reg. v. Phelps*, 1 Car. & Marsh, 180.

LARCENY ON ELOPEMENT.

In the case of *Rex v. Tolfre*, M. C. C. 243, a person who lodged with the prosecutor took away the wife of the latter, together with money and plate of the prosecutor, to the value of 150*l.*, and wearing apparel and goods to the value of 70*l.* more: with this property the prisoner and the prosecutor's wife proceeded to the prisoner's lodgings, where they lived together (she passing as his wife) till he was apprehended. The wife of the prosecutor who was called as a witness for the prisoner, and swore that there was none of the property but what

she had herself taken or given the prisoner to take. The twelve judges held this was larceny, for though the wife consented, it must be considered that it was done *invito domino*. In a later case, in which the circumstances were nearly similar, the following rules were laid down by Mr. Justice Coleridge. There is such a unity of interest between husband and wife, that ordinarily the wife cannot steal the goods of the husband by the delivery of the wife; and if the wife deliver the goods of the husband to an indifferent person, for that person to convert them to his own use, this is no larceny; but if the person to whom the goods are delivered by the wife be an adulterer it is otherwise, and an adulterer can be properly convicted of stealing the husband's goods, though they be delivered to him by the wife. If no adultery has actually been committed by the parties, but the goods of the husband are removed from his house by the wife and the intended adulterer, with an intent that the wife should elope with him, and live in adultery with him; this taking of goods is, in point of law a larceny. If a wife elope with an adulterer who takes her clothes with them it is a larceny; and it is as much a larceny to steal her clothes which are her husband's property, as it would be to steal anything else that was his property. If on the trial of a man for larceny the jury are satisfied that he took any of the prosecutor's goods, then there being a criminal intention, or there having been a criminal act between the prisoner and the prosecutor's wife, the jury ought to convict, even though the goods were delivered to the prisoner by the prosecutor's wife; but if the jury should think that the prisoner took away the goods merely to get the wife away from her husband as a friend only, and without any reference to any connexion between the prisoner and the wife, either actual or intended, they ought to acquit.—*Reg v. Tollett*, 1 Car. & Marsh, 112.

The portion of the judgment as to taking the clothes of the wife is as follows: "Mr. Carrington, (the counsel of the prisoner) has said, that if the wife eloped with an adulterer, it would be no larceny in the adulterer to assist in carrying away her clothes. I do not agree with him, for I think that if she elopes with an adulterer, who takes her clothes with them, it is larceny to steal her clothes, which are her husband's property, just as much as it would be larceny to steal her husband's wearing apparel, or any thing else that was his property." This dictum is of considerable importance, as in almost every elopement the wife takes her own clothes.

PRACTICAL POINTS OF GENERAL INTEREST.

PROPRIETORY CHAPEL.

It has been recently held that a license granted by a bishop to a clergyman, to officiate in a proprietary chapel, is revocable at the will of the bishop. The license was to perform the office of minister of Charlotte Street Chapel, Pimlico, (the consent of the rector having been obtained) "in preaching the word of God, and in reading the common prayers, and performing all other ecclesiastical duties belonging to the said office, according to the form prescribed in the book of Common Prayer." "It does not appear," said Dr. Lushington in deciding the question, "from the articles, that the bishop had any particular reason for revoking the license in this case; they are silent as to the motives which induced the bishop to adopt this measure; all that is prescribed to the Court is an act done by him purporting to revoke the license he had granted. The question therefore is, whether the bishop has an absolute right at his own exclusive direction to revoke such a license." "I think the principle on which the law of the church stands in this matter is this:—no clergyman whatever of the Church of England, has any right to officiate in any diocese, in any way whatever as a clergyman of the Church of England, unless he has a lawful authority so to do, and he can only have that authority when he receives it at the hands of the bishop, which may be conferred in various ways; as by institution (in the case of a benefice) by license, when the party is a perpetual curate; and by license when the clergyman officiates as stipendiary curate.

"I need not state that the ancient canon law of this country knew nothing of proprietary chapels, or unconsecrated chapels, at all. The necessity of the times, the increase of population, and want of accommodation in the churches and chapels in the metropolis, and other large towns, gave rise to the creation of chapels of this kind, and to the licensing of ministers of the Church of England to perform duty therein. The license granted by the bishop on such occasions, emanates from his episcopal authority. He could not, however, grant such a license without the consent of the rector or vicar of the parish, for the cure of souls belongs exclusively to the rector or vicar. Here is the consent of the rector obtained, not to an ordinary license to a stipendiary curate, but to confer a nondescript title, that of minister of an unconsecrated chapel. The bishop, therefore, confers this license by virtue of his episcopal authority. What is to prevent his revocation of it at any time he may think fit? Is this a license, which will not only be good against him, but is it to prevail against any successor who may come after him? It is a license granted only from the exigency of the moment, and for no other reason whatever. Supposing, by new powers being made under the Church Building Acts, other churches and

chapels were to be consecrated according to the law of the Church of England throughout the land; would not the necessity for these unconsecrated chapels cease? And, under such circumstances, could the grantee of such a license continue to officiate, in direct opposition to the bishop? It is not necessary to examine the expediency of vesting such a power in the bishop; the question is, what is the law? I think it is incumbent upon those who assert the affirmative; that is, who assert that it is in the power of the bishop to confer a permanent right, as against himself, to shew that such a power has been conferred by the ecclesiastical law. I am of opinion that no such power has been granted; that it is not even in the power of the bishop himself to estop himself; but that he is bound, according to the exigency of the case, to revoke such a license, if he thinks the good of the church requires it. I have heard no authorities cited on one side or the other, which require the examination of the Court, to ascertain their applicability, and on general principles I am of opinion that the bishop has authority to revoke such a license as this, according to his own discretion; he has exercised that discretion; he has exercised that discretion in this case; a discretion not examinable by me; and I have no alternative but to admit the articles." *Hodgson v. Dillon*, 2 Curt. 388.

MASTER AND SERVANT.

AN action on the case will lie against a master for an injury done through the negligence or unskilfulness of the servant acting in his master's employ, as where the servants of a carman ran over a boy in the streets, and maimed him, by negligence, an action was brought against the master, and the plaintiff recovered. 1 Raym. 739. So when the servant of *A.*, with his cart ran against the cart of *B.*, which contained a pipe of wine, whereby the wine was spilled, an action was brought against *A.*, the master, and holden to be maintainable. *Id.* Selw. N. P. 1097, 10th edition. In a late case an action was brought for the negligence of defendant's servant, and consequent injury to plaintiff. Plea, that the defendant was not employed to make the alterations (those through which the injury occurred). The defendant had been employed by a club (the Clarence Club) to make alterations and suggestions in their club house, and he had employed *A. B.*, a gas fitter, to do such part of the work as lay in his, *A. B.*'s department, and by the negligence of the workmen employed, the gas escaped, an explosion ensued, and great injury was done to the plaintiff, who was a servant in the club. "The charge is," said Lord Abinger, C. B., "that the defendant undertook to do certain work, and that he conducted himself with so much negligence about it as to occasion injury to the plaintiff. I own I entertain considerable doubt as to whether this action will lie against the defendant; the objection however, is upon record; the question therefore for you is whether negligence by the defendant

or his servant was the cause of injury? That there was something wrong was evident; but if any of the servants of the establishment did anything to the pipe or to the gas before the work was finished, the defendant is not liable. Again, if you think the extra work of which the defendant's witness has spoken, and from defect in which it is said this accident occurred, was done by that witness without the defendant's knowledge, then the defendant is not answerable for the injury thus occasioned. If, however, you think this work was undertaken by the defendant, and that there was negligence then your verdict must be for the plaintiff." Verdict for the plaintiff, damage 500*l.* *Rapson v. Cubitt*, 1 Car. & Marsh, 64.

NEW BILLS IN PARLIAMENT.

SPECIAL PETTY SESSIONS.

A BILL has been brought in by Mr. G. Banks and Mr. Estcourt, "To make further Provision for the holding of Special Petty Sessions, and for providing that in certain Cases, where Persons accused shall voluntarily desire to plead Guilty, it shall be competent to the Magistrates at such Sessions to award the Sentence of the Law." It recites that by the laws now in force, persons apprehended upon certain charges of larceny, felony, and misdemeanor, are committed to prison to take their trials at the assizes or general or quarter sessions of the peace, and such persons frequently undergo long periods of imprisonment before their trials can take place, and such trials are attended with considerable expense and inconvenience, and in many of such cases it is the desire of such persons to make confession of their guilt in respect of such charges: and that it is most conducive to the ends of justice, and to the reformation of offenders, that persons, when proved by their own voluntary confession to be guilty, should receive the adjudication of the sentence of the law without unnecessary delay, also that the expenses of trials and inconvenience to witnesses may, as far as possible, be avoided; therefore it is proposed to be enacted as follows:

1. That when any person shall be brought before any justice or justices of the peace upon any charge of larceny, or of any felony punishable as larceny, or of any of the misdemeanors following; (namely)

Obtaining any chattel, money, or valuable security, or property by false pretences; or, Receiving any chattel, money, or valuable

security, or property, knowing the same to have been feloniously stolen ;

Such justice or justices, upon taking the examinations in writing of the prosecutor and witnesses, as now by law in such cases required, may proceed as follows ; (that is to say) such justice or justices shall read or cause to be read the examinations so taken to the person charged, and when the same shall have been read, the justice or justices shall inquire of the person so charged whether he or she may desire to say any thing touching the matter of that charge, and also whether it is his or her desire at that time to enter any plea either of guilty or of not guilty ; and in case the person so charged shall voluntarily express a desire to plead guilty with reference to that charge, it shall be lawful for the justice or justices to order the offender to be detained in custody, if he or they in his or their discretion shall think fit, until the next special petty sessions, to be holden as hereinafter mentioned, for the division in which the offence shall be alleged to have been committed, or in which the offender may be or be found, instead of committing him or her for trial at the assizes or general or quarter sessions of the peace ; and the said justice or justices shall have full power and authority to admit the person so charged to bail in such sum or sums of money, and with or without sureties, as he or they shall think fit ; and such justice or justices shall subscribe all examinations, bailments and recognizances, and deliver or cause the same to be delivered to the clerk of the petty sessions for the division, to be appointed as hereinafter mentioned.

2. That once in every fourteen days at the usual place of holding petty sessions for the division, and at some time to be fixed by the justices usually acting therefore, there shall be holden a special petty sessions in and for every division of every county, riding or other place in which petty sessions are or may be hereafter held ; and that, in addition to such business as is ordinarily transacted at petty sessions, it shall and may be lawful for the justices then and there assembled to hear and determine all such cases of larceny or felony or misdemeanour as aforesaid, in which the person charged shall voluntarily desire to plead guilty (whether the case shall have been previously investigated or not) ; and no indictment, arraignment or other formal proceeding shall be necessary or required, otherwise than as herein is provided ; (that is to say) upon taking the examination in writing of the prosecutor and witnesses, as now by law in such cases required (if the case shall have been previously investigated, and if the case shall have been previously investigated, then upon reading or causing to be read the examination of the prosecutor and witnesses to the person so charged), the justices shall inquire of the person so charged, whether he or she desires to say any thing touching the matter of that charge, and also whether it is his or her desire at that time to enter any plea, either of guilty

or of not guilty ; and in case the person so charged shall voluntarily express a desire to plead guilty, it shall be lawful for the said justices to convict him or her of the charge in respect of which he or she shall so have pleaded guilty as aforesaid ; and it shall be lawful to the said justices to adjudge the offender, in pursuance of such conviction, to be committed to the gaol or house of correction belonging to such county or place as aforesaid, there to be imprisoned for any term not exceeding six calendar months, with or without hard labour, for the whole or any part of the term, and with or without solitary confinement, as the said justices shall think fit, so as such offender shall not be kept in solitary confinement by virtue of this act for more than one week consecutively ; and the said justices may further order any such offender, if a male, and under the age of sixteen years, to be once or twice publicly or privately whipped, or to be once privately whipped and discharged, without imprisonment : Provided always, that in case the person so charged at the special petty sessions (whether the case shall have been previously investigated or not), shall, before such justices at petty sessions, express his or her desire to have the said charge inquired into by a jury, then the same proceedings shall be had in every such case with reference to the trial of such person as if this act had not been passed.

3.—*Infants.* If the person so charged, being an infant under the age of sixteen, shall desire to plead guilty to the charge, the justices, before they proceed to any such conviction as aforesaid, shall inquire whether any parent or guardian of such person is willing to attend and shall further inquire whether such parent or guardian does or does not, on the part of such person being an infant as aforesaid, assent to the making of the conviction and adjudication according to the provisions of this act ; and if such parent or guardian shall express a desire to have the said charge inquired into by a jury, or shall withhold his or her assent, on the part of such person being an infant, to the conviction and adjudication being made under the provisions of this act, the said justices shall not in such case convict or adjudicate, but the same proceedings shall in every such case be had as if this act had not been made ; otherwise in cases where the assent of such parent or guardian is duly signified, the justices may proceed to convict and adjudicate, as well in the case of such person being an infant, as in other cases, according to the provisions of this act : Provided always, that when no parent or legal guardian of such person being an infant as aforesaid is in attendance or is willing to attend, it shall be competent to the justices, at the request of such person being an infant as aforesaid, to permit one of the guardians of the poor, acting in that division, to appear and answer for the purposes of this act, as and for the parent or legal guardian of such infant, with respect to the conviction and adjudication by such justices, according to the provisions of this act :

Provided also, that the assent of such parent or guardian to such conviction and adjudication shall be in writing, and shall be signed by the parent or guardian, and shall be returned, together with the examinations and depositions in the case, together with a copy of the conviction and adjudication, to the clerk of the peace, as hereinafter is provided.

4. That the said conviction shall and may be in the form hereinafter directed, and shall be signed by the chairman of the said special petty session, and need not be under seal, and shall be of three parts, one to be preserved by the clerk of the said session, one other part thereof to be transmitted to the clerk of the peace as hereinafter directed, and one other part thereof addressed to the keeper of the gaol or house of correction for the county or place, and delivered to him, shall be full authority to such keeper and he is hereby required to receive the body or bodies of the person or persons therein named, and to punish him, her or them, in the manner by such conviction directed, as fully and effectually as if the offender or offenders had been tried and convicted, and sentenced for punishment by the Court of general quarter sessions of the peace.

5. Justices in special petty sessions to have same power as justices in quarter sessions.

6. Justices to exercise their discretion, whether to commit for trial at the assizes or sessions, or to receive the plea of guilty, if tendered according to the provisions of this act.

7. Justices to transmit to the clerk of the peace the conviction of offenders, together with the depositions. Form of conviction.

8. Justices empowered to provide for the safe custody of prisoners.

9. Justices may commit offenders to borough or county gaol.

10. Expences of prosecution.

11. Order upon the treasurer of the county, &c.

12. From what source the expences of prosecution shall be paid where no county rate exists.

13. Certain provisions in 7 Geo. 4, c. 64, to extend to this act.

14. Act not to extend to Scotland or Ireland.

CRIMINAL JURISDICTION OF QUARTER SESSIONS.

A bill has been brought in by Lord Godolphin to "limit the criminal jurisdiction of courts of quarter sessions." It recites that by reason of the mitigation of the punishments formerly by law annexed to divers of the offences hereinafter mentioned, many of such offences are now usually tried at the quarter sessions of the peace for the several counties, cities, and boroughs in England and Wales, which offences before the said alteration of punishment were not usually tried at the said

quarter sessions: and that it is expedient that all the offences hereinafter mentioned should be tried by the judges of superior courts, or by other the justices and judges of oyer and terminer and general gaol delivery, and not at the quarter sessions of the peace: it is therefore proposed to be enacted,

That no justices of the peace for any county, riding, division, liberty, or franchise in England or Wales, and no recorder for any city or borough in England or Wales, shall, at their respective general or quarter sessions of the peace for such county, riding, division, liberty, franchise, city, or borough, or at any adjournment thereof, try any person or persons charged with any capital offence, or with any of the following offences; that is to say—Housebreaking, stealing above the value of five pounds in a dwelling house.

Horse stealing, sheep stealing, cattle stealing, maliciously wounding cattle.

Bigamy, forgery, perjury, conspiracy, assault with intent to commit any felony.

Administering or attempting to administer poison with intent to kill or do some grievous bodily harm.

Administering drugs or doing any thing with intent to cause or procure abortion.

Manslaughter.

Destroying or damaging ships or vessels.

The breaking of shops, warehouses, counting houses, and buildings within the curtilages of dwelling houses.

Killing sheep with intent to steal the carcasses.

The uttering of all forged instruments, and the various offences enumerated in 11 G. 4,

and 1 W. 4, c. 66, forging the assay marks on gold or silver plate, and all the offences relating to coin enumerated in 2 and 3 W.

4, c. 34.

The abduction of women.

Bankrupts not surrendering under the commission or flat against them, or concealing their effects.

Breaking down bridges and banks of rivers.

Taking rewards for helping to the recovery of stolen goods.

Personating any officer, seaman, or other person in order to receive any wages, pay, allowance, or prize money due or supposed to be due, or any out-pensioner of Greenwich hospital, in order to receive any out-pension, allowance, due, or supposed to be due.

Sending threatening letters, and using threats to extort money.

Larceny on navigable rivers and canals, and stealing and destroying goods in progress of manufacture, and larcenies after a previous conviction.

Embezzlement, larceny by clerks and servants, and receivers of stolen goods, whether such person or persons shall be charged as principal offenders or as accessories before or after the fact.

2. Indictments to be sent to assizes.

3. Recognizances to be obligatory to appear at assizes.

"THE GRANDEUR OF THE LAW."

DUKES.

3. WILLIAM MONTAGU,^a Duke of MANCHESTER, Viscount Mandeville, and Baron Montagu of Kimbolton.

The ancestors of this nobleman were Sir Edward Montagu, Lord Chief Justice of the Courts of King's Bench and Common Pleas in the reign of Henry VIII., and holding the latter office under Edward VI; and his grandson, Sir Henry Montagu, who was the Lord Chief Justice of the King's Bench in the reign of James I.

The family of Montacute is very ancient, the first of the name in England coming over with the Conqueror. Thomas Montagu, (the father of Sir Edward,) who was buried at Hemington, in Northamptonshire, in 1517, is supposed to have been a younger branch of this family, the elder branch of which were anciently Earls of Salisbury, a title which became extinct in that family in 1428.

Sir Edward's mother was Agnes, daughter of William Dudley of Clopton, in Northamptonshire, Esq: and she had issue two sons, of whom Sir Edward was the youngest. He was born at Brigstock, in Northamptonshire, and studied the law in the Middle Temple, where he was Autumn Reader in 1524, and Double Reader in 1531, being then called to the degree of Serjeant-at-law. Ten other Serjeants were at the same time elected, and the feast which they gave on the occasion at Ely House, and which is described in Stow's Survey of London, was honoured with the company of the King and Queen, and the whole court. It lasted five days, and was so magnificent that it is said to have wanted little of the splendour of a feast at a coronation. In 29 Hen. VIII. (October 16th, 1537)

^a Although the noble family of Manners is not descended from any lawyer, it is curious that John Manners the eighth Earl of Rutland, and father of the first Duke of Rutland, (so created in 1703,) was one of the Commissioners appointed by the Parliament in November 1643, to execute the office of Lord Chancellor. It appears, however, both from Clarendon and Whitlock, that the Earl modestly desired to be excused, as not understanding the law nor the oath to be taken.

he was appointed King's serjeant; and on the 21st January, 1539, he was advanced to the office of Lord Chief Justice of the King's Bench.

It appears from a family MS., cited in Col-lins's Peerage, that he was Speaker of the House of Commons; and that, on a bill for a subsidy not passing, he was sent for by the King, who said to him, "Ho! will they not let my bill pass?" And laying his hand on the head of the Speaker (kneeling before him), added, "Get my bill to pass by such a time to-morrow, or else by such a time, this head of your's shall be off." Henry VIII. was not a man to break his word, and Sir Edward of course took care that neither he nor the Commons should be deprived of a head.

Having resigned the office of Chief Justice of the King's Bench, he was appointed Chief Justice of the Common Pleas on November 6, 1545, and presided in that Court during the whole of the reign of Edward VI.

Shortly before the death of that monarch, he was compelled, most reluctantly and under threats of the Duke of Northumberland, to assist in drawing, and to sign, the deed or will by which King Edward altered the order of succession in favour of Lady Jane Grey. For this act he was imprisoned in the Tower, but his name (with fifteen others) being struck out of the list of twenty-seven prisoners left for trial, he was released from confinement. Queen Mary no doubt became acquainted with his resistance in the first instance, and his compulsion at the time. His own account of the transaction, which he shortly afterwards drew up, may be seen in Fuller's Church History, vol. ii. p. 369. Being then, however, as he acknowledges, "a weak old man," he was removed from his office of Chief Justice in the following September (1553), and retired to his mansion at Boughton, in Northamptonshire. He died on Feb. 10, 1556-7, and was buried at Hemington: and by his will, dated in the previous year, it appears that he had numerous manors and estates in the counties of Northampton, Leicester, Bedford, and Huntingdon.

He was thrice married. His first wife was Elizabeth, daughter of William Lane, of Oringbury, Northamptonshire, Esq., by whom he had three sons (who died young) and three daughters. His second wife was daughter of George Kirkham, of Warmington, Northamptonshire, Esq., by whom he had no issue. And his third wife was Hellen, daughter of John Roper, of Eltham, in Kent, Attorney General to Hen. VIII., and by her he had five sons and six daughters.

The eldest of these five sons was Edward, who married Elizabeth, daughter of Sir James Harrington, of Exton, Rutland. From their eldest son Edward, descended the Dukes of Montagu, a title now extinct; and their third son was Sir Henry Montagu, first Earl of Manchester.

Sir Henry Montagu was educated at Christ's College, Cambridge, and then became a student in the Middle Temple, where he was Autumn Reader, 4 James I.

In 1601, he was M. P. for Higham Ferrers, and in that Parliament rebuked Mr. Serjeant Hele for asserting, on a motion for supply, that the Queen had as much right to our lands and goods as to any revenue of the Crown. In King James's first Parliament, March 1604, he was M. P. for London, (having been shortly before elected Recorder of the City, and knighted) and took a prominent lead in all important debates, being the first named in a committee to review the statutes of the kingdom, and one of another committee to manage a conference with the Lords concerning the taking away of the Court of Wards.

On February 4th, 1611, he was called to the degree of the coif, seven days after which he was created King's Serjeant; and in the following May he is mentioned as counsel on the trials of the Earl and Countess of Somerset. On the removal of Sir Edward Coke, in 1616, he was, on November 16th, constituted Lord Chief Justice of the Court of King's Bench; on which occasion Lord Chancellor Ellesmere addressed him in the terms recorded in Moore's Reports, 828; and his splendid procession to Westminster is described by Dugdale in his *Origines Juridicales*, p. 98. He continued in this office until 18 James I. (1620) when, on December 14th, he was made Lord Treasurer

of England. Although it was said he had paid 20,000*l.* for the office, he did not retain it quite a year, Sir Lionel Cranfield, afterwards Earl of Middlesex, who had married a niece of the Duke of Buckingham, being appointed in his place on October 13th, 1621.

Sir Henry was raised to the Peerage, on December 19th, 1620, by the title of Lord Montagu of Kimbolton, in the county of Huntingdon, and Viscount Mandevil, and was made Lord President of the Council. Under this title, he was named the first Commissioner of the Great Seal, on the disgrace of Lord Chancellor Bacon, in January or May, 1621, (for the authorities differ), so that he must have held the office of President for some months before he was discharged from that of Treasurer. He remained Lord Commissioner until Bishop Williams was made Lord Keeper, on July 10th, 1621.

He continued Lord President under Chas. I, who, on February 5th, 1626, created him Earl of Manchester, with high commendations in the preamble of his patent. In 1627, he was made Lord Privy Seal, and retained the office till his death, which occurred on November 7th, 1642, at nearly eighty years of age; having maintained, during those difficult times, a good general reputation and credit with the whole nation, and being always looked upon as full of integrity and zeal for the Protestant religion, and of unquestionable loyalty to the King. He was buried at Kimbolton.

He, as well as his grandfather, married three wives. The first was Catherine, the daughter of Sir William Spencer, of Yarnton, Oxfordshire, by whom he had four sons and three daughters: the second was Anne, daughter and heir of William Wincot, of Langham, Suffolk, Esquire, and widow of Sir Leonard Halliday, Lord Mayor of London; by whom he had no issue: and his third wife was Margaret, daughter of John Crouch, of Cornbury, Hertfordshire, Esquire, and Widow of John Hare, Esquire, of Tetteridge, by whom he had two sons and two daughters.

He was succeeded in his honours by Edward, his eldest son by his first wife, who, in June, 1643, was appointed by the Parliament one of the Commissioners of the Great Seal; and distinguished himself greatly as a commander,

In various actions against the king's forces. Cromwell, however, bringing charges against him, he was no longer employed; and horrified and disgusted with the murder of the king, he retired from Parliament till the meeting on April 25th, 1660, when the peers voted the restoration of Charles II. At this meeting he was appointed Speaker, and on May 5th was declared First Commissioner of the Great Seal, which he held till the return of the King,

to whom, on the part of the Peers, he made an address of congratulation. After being honoured with the Garter, and filling the office of Lord Chamberlain, he died on May 5th, 1671.

His grandson Charles, the fourth Earl, was created Duke of Manchester by George I., on April 30th, 1719.

See also the Earl of Sandwich.

Communications are requested to be addressed to F. S. A., to the care of the Editor.

LAW OF ATTORNEYS.

ATTORNEY AND CLIENT.

Lord Redesdale says, in his treatise on Pleading, p. 153 3d. edit.; p. 189, 4th edit. "Where bills have been filed to impeach deeds, on the ground of fraud, attorneys who have prepared the deeds, and other persons who have been concerned in obtaining them, have been frequently made defendants as parties to the fraud complained of, for the purpose of obtaining a full discovery, and no case appears in the books of a demurrer by such a party, because he had no claim of interest in the matter in question by the bill; and in the case of *Le Texier v. The Margravine of Auspach*,¹ Lord Eldon says, "Where an attorney or other agent is so involved in the fraud charged by the bill, that though a reconveyance or other relief cannot be prayed against him, a court of equity will rather than that the plaintiff shall not have his costs, order the agent to pay them; if he is made a party, the plaintiff must pray that he may pay the costs, otherwise a demurrer will lie." In *Bowles v. Stewart*, 1 Sch. & Lef. 209; Lord Redesdale acted on the opinion expressed in his work on Pleading, and in a very late case Sir L. Shadwell, V. C., has held, that a solicitor who has joined his client in practising a fraud may be made a co-defendant to a suit, to set aside the transaction.

ANSWERS TO COMMON LAW QUESTIONS.

A correspondent who signs himself "Inexpereus," having seen the answers on Conveyancing rendered by "Lector," has forwarded the following answers to the Common Law questions, put at the last examination in Hilary Term.

¹ 15 Ves. 159.

² *Bendles v. Burch*, 4 M. & C. 332.

Process.

1. Four months, pursuant to the memorandum subscribed at the foot of the writ, according to the stat. 2 W. 4, c. 39, s. 1.

2. In case it should be made appear by affidavit to the satisfaction of the Court, out of which the process issued, or in vacation of any judge of either of the said courts, that any defendant has not been personally served with any such writ as aforesaid, and has not appeared to the action and cannot be compelled to do so, without some more efficacious process. Then it shall be lawful for such court or judge to order a writ of *distringas* to be issued in order to compel the appearance of such defendant.

3. That the cause of action amounts to 20l. or upwards, and that the deponent believes the debtor is about to quit England, unless forthwith apprehended, stating the grounds for such belief.

4. Within three days, otherwise the plaintiff cannot enter an appearance for the defendant according to the statute.

5. If the defendant do not declare before the end of the term, next after that in which the defendant has appeared, service of a written demand of declaration may be made on the plaintiff, his attorney or agent, which expires in four days.

Pleading.

6. By R. H. T. 4 W. 4, a joinder in demurrer need not be signed by counsel.

7. No more than one count by the same rules will be allowed.

8. A plea of *non est factum*, operates as a denial of the execution of the deed in point of fact only, and all other defences must be specially pleaded.

Statute of Limitations.

9. By suing out a writ of summons which may be continued by *alias* and *pluries* as the case may require, if any defendant therein named, have not been served; but no first writ is available to prevent the operation of the statute unless the defendant be served therewith, or proceedings towards outlawry be had thereupon or unless such several writs, (if any) issued in continuation be returned "*non est inventus*" and entered of record, within one

calendar month next after the expiration thereof including the day of such expiration.

Evidence.

10. The course of proceeding here adopted is to serve the opposite party with a notice to admit, and unless he consent within forty-eight hours, to obtain a summons before a judge to shew cause why he should not consent to such admission, or in case of refusal be subject to pay the costs of the proof.

Judgment by default.

11. By a writ of inquiry, or in the case of bills of exchange, by a rule to compute principal and interest.

12. In an action of debt final judgment may at once be signed in default of plea.

Interpleader.

13. Under the Interpleader Act, 1 & 2 W. 4, c. 58.

Withdrawing juror.

14. Each party pays his own costs. The withdrawing a juror by consent of the parties is no bar to a future action for the same cause. *Jadderson v. Nestor*, R. & M. 402.

Tender.

15. It will not be good if clogged with any condition. 5 Esp. 48; Camp. 21; 1 Car. & P. 257, 419.

SELECTIONS FROM CORRESPONDENCE.

LOCAL COURTS.

Sir,

I cordially concur in the observations contained in your Number of the 19th instant, respecting local courts, viz. "that no new inferior tribunals should be created, until the utmost had been done in diminishing the expense of proceedings in the Superior Courts."

The foundation for local courts is based upon the ground of cheapness and expedition. Now it must be evident to all persons acquainted with legal matters, that both those objects have been attained to a surprising degree, by the trial of causes before the sheriff; for, to commence and try an action in about three weeks, is, I apprehend, quite sufficient expedition, and much greater than is agreeable to most of the defendants. And although cheap as such actions now are, compared with what they were formerly, yet they might be made much cheaper still; why should the issuing of a writ cost 5s. out of purse, which, prior to 1838, was but 3s. 1d. in the Queen's Bench; 2s. 9d. in the Common Pleas, and a Middlesex writ 10d., and in term time only 6d. issuing.

I beg to suggest, that for debts under 20l., it should not exceed 1s. 7d., and only 10s. 6d., to the attorney, including copy and service.

By making this alteration, and dispensing with the rule to plead, the pleadings fee of 7s. the issue (as the writ of trial contains the whole of them), and reducing the under-sheriff's fees to 10s., such actions might be tried

for about 4l. And then, I apprehend, there would be no necessity whatever, for the intended local courts; especially, as such are established in almost every place of any note already, some up to 15l.

And though small as such costs would be, yet, would it not be much better for all parties voluntarily to make the reduction, than to lose at least two-thirds of the little business of this nature that is now left? the increased number of such actions would about compensate for the deficiency, but if not satisfactory to the sheriff, his jurisdiction might be enlarged.

Many complaints were made against the present high scale of fees when first published (in December, 1837,) and you then (in your 15th volume) inserted several letters upon the subject. The compensations which occasioned such additional clogs upon the wheels of Justice, might surely be much easier borne by the country, than the enormous expense which will be entailed upon it, by the contemplated local Courts, which after all, will fail to give entire satisfaction, unless controuled by the superior ones, and even then, they ought not to possess an *exclusive* jurisdiction.

I trust I have shewn, therefore, that there is still ample room to make such reduction in the costs of actions of the above description, as will render it unnecessary to divest the superior Courts of so considerable a portion of their present business, and, which is so very beneficial to the revenue in attorneys' stamps, postages, &c., as well as to the profession.

INDEX.

SUPERIOR COURTS.

Lord Chancellor.

BANKRUPTCY.—DEPOSIT OF SECURITY.—NOTICE.—ORDER AND DISPOSITION.—2 AND 3 VICT. c. 29.

A bankrupt long before his bankruptcy deposited a policy of assurance with a creditor to secure payment of a bond, and the creditor did not give notice of the deposit to the Assurance Company until after the bankruptcy. Held that the transaction was protected by the Act 2 and 3 Vic. c. 29.

In 1826, Sarah Styau having a large sum of money left by her brother's will, in the hands of trustees, to her separate use, lent £3000 to a commercial firm, consisting of her husband, since deceased, and her sons, Thomas and William Styau, the bankrupts hereafter mentioned, upon their note, payable with interest to the said Thomas Styau and William Henry Smith, as trustees for Mrs. Styau, and as collateral securities for the payment, two policies of insurance, each for £2500, effected with the Equitable Assurance Company on the lives of the said Thomas and William Styau respectively, were deposited with Mr. Smith. Mrs. Styau died in 1833, having by her will given all her estate to the

said W. H. Smith, and two others on certain trusts, and she appointed them her executors, and authorised them to give time for seven years for payment of the said debt, which then amounted to £3800. Thomas and William Styau passed their bond for that sum to Mr. Smith and his co-trustees, and agreed that the said policies should still remain with Mr. Smith as collateral securities. Thomas and William Styau were declared bankrupts on the 1st April, 1841, and a question arose between their assignees and Mrs. Styau's trustees, as to the right of property in the said policies, under the circumstances stated in a special case from the Court of Review. That case stated, among other things, that the bankrupts being jointly and severally indebted to the petitioners (W. H. Smith and others, petitioners in the Court of Review) as executors of Sarah Styau, in the sum of £3800, executed their said bonds to them in August, 1838, for payment of the said debt by instalments, with interest. And as a collateral security for the payment, they deposited a policy of insurance for £2500 on the life of the bankrupt, T. Styau, which had been previously deposited with the said petitioner, W. H. Smith, in trust for Mrs. Styau, as a security for the same debt, and continued in his custody ever since as such security; that the said policy was effected in February, 1810, with the equitable insurance society, whereby the trustees thereof assured the sum of £2500 to be paid to the executors, administrators, and assigns of the said T. Styau after his death, and that the said society is in the nature of a joint stock company, and wherein the persons effecting policies of assurance are jointly interested in the profits to be made by the society. And the said petitioners further stated that there was due to them, at the date of the fiat, and still is, the sum of £3782 upon the said bond, and the petition prayed that the policy may be sold, and the proceeds applied, in satisfaction of the said debt. The petition did not allege, nor was any proof tendered, of a notice to the assurers of the deposit before the bankruptcy of T. Styau. It appeared that he had committed an act of bankruptcy on the 15th March, and that such notice was given to the assurers on the 22nd March, and that the fiat bore date on the 1st of April following, at the hearing of that petition on the 30th July, 1841, before the acting judge of the Court of Review, the counsel for the assignees of the bankrupt, without disputing any of the facts alleged in the petition, claimed the whole right of property in the said policy, by force of the statute 6 G. 4, c. 16, s. 72, as being at the time of the bankruptcy of Thos. Styau, with the consent of the petitioners in the possession, order and disposition of the bankrupt. They relied on the absence of any allegation or proof that the assurers had notice of the said deposit prior to the bankruptcy, the want of which, they insisted was, by law, conclusive evidence of the right claimed for the assignees. The learned judge decided that that was not conclusive of such right, and that

there was no sufficient evidence that the policy was at the time of the bankruptcy with the consent of the petitioners in the possession, order or disposition of the bankrupt, and that he was then the reputed owner thereof, within the intent and meaning of the statute. And he declared the petitioners were equitable mortgagees of the said policy, and ordered that the same should be sold and applied in the manner prayed by the petition, &c. The assignees abandoned, in their petition to the Lord Chancellor, containing the above case, all claim to the policy on W. Styau's life, as it did not appear that he committed any act of bankruptcy before the 22nd of March, when the former notice of the deposit was given to the Assurance Company. The petition prayed his lordship to reverse the said order of the judge of the Court of Review.

Mr. Richards and *Mr. Stinton* for the petitioners (the official assignee and the creditor's assignees) insisted that the policy did not partake of the character of an equitable mortgage until notice of the deposit or assignment was given to the Equitable Assurance Company, and that until then it was in the order and disposition, and reputed ownership of the bankrupt. That notice was given on the 22nd of March, but Thos. Styau committed an act of bankruptcy on the 15th, and the fiat issued on the 1st of April had relation back to the time of the act of bankruptcy.

Mr. Swanston and *Mr. Bacon* for the respondents (the executors and trustees of Mrs. Styau, and petitioners in the Court below) insisted that notice was not necessary, and if it was, that the company had constructive notice of the deposit by reason of the constitution of the Company making the assured partners in it.

The following cases were cited on the point of notice:—*Ryall v. Roules*; ^a *Fulker v. Case*; ^b *Jones v. Gibbons*; ^c *Ex parte Monroe*; ^d *Ex parte Burton*; ^e *Williams v. Thorpe*; ^f *Ex parte Colville*; ^g *Thompson v. Soern*; ^h *Bozen v. Bolland*; ⁱ *Timson v. Ramsbottom*; ^k *Smith v. Smith*; ^l and *Meux v. Bell* ^m.

The Lord Chancellor, giving his judgment on a subsequent day, stated the facts as above, and said it was not necessary for him to give any opinion on the points as to the necessity of notice of the deposit to the company, and what would constitute sufficient notice, nor to comment on the authorities that were referred to on those points, as he was of opinion that the transaction was within the protection of the recent act 2 and 3 Vict. c. 29, s. 1, by which it is declared that all dealings and transactions by and with any bankrupt *bona fide* entered into before the issuing of any fiat against him, &c., shall be deemed to be

^a 1 Ves. sen. 348 s. c. 1 Atk. 177.

^b 1 Bro. C. C. 126 s. c. 2 T. Rep. 491.

^c 9 Ves. 407. ^d Buck 800. ^e 1 Glyn & J. 207.

^f 2 Simons 257. ^g Mont. 110.

^h Mont. and B. 67. ⁱ Mont. and B. 74.

^k 2 Keen 35. ^l 2 Cro. and M. 232.

^m Hare 73.

valid, notwithstanding any prior act of bankruptcy by such bankrupt committed, provided the person so dealing with the bankrupt, &c., had not at the time any notice of a prior act of bankruptcy committed by the bankrupt, &c. The whole of the transaction in the present case was completed before the fiat was issued, and it is not alleged that any of the parties, now the respondents, had any notice of any act of bankruptcy by the bankrupt, before the deposit of the policy. It made no difference that the deposit was before the act of bankruptcy, and the transaction was not completed by the notice till after the act of bankruptcy. The order of the court below must be affirmed. ^a

In re Styans, Bankrupts. Feb. 26, 1842.

Rolls.

CREDITOR'S SUIT.—MORTGAGEE.—COSTS.

Where a mortgagee has a debt due from a mortgagor, exclusive of his mortgage debt, and joins with another creditor in instituting a creditor's suit, he does not by such proceeding render the mortgaged premises liable to any deduction on account of the costs of the suit.

This was a creditor's suit instituted by the plaintiffs for the administration of the estate of a deceased mortgagor, one of the plaintiffs being also mortgagee of certain hereditaments belonging to the deceased. In pursuance of an order of the Court, the mortgaged property had been sold and the amount paid into Court. The sum thus realized was not sufficient to satisfy the amount due on the mortgage, and the estate was altogether insolvent. Application was now made on behalf of the mortgagee to have the amount produced from sale of the estate paid to him in part discharge of his mortgage, but it was objected that the fund in court was liable to the costs of the suit, and that the mortgagee's proportion of them should be satisfied out of it before payment of the balance to him.

Tinney for the mortgagee, said that a mortgagee had a personal demand, which entitled him to proceed against the assets, and he had also a charge upon the land. He was not therefore bound to make any election, but could proceed against both until his claim was satisfied, and the circumstance of the mortgagor's estate being insolvent could not lessen his rights. He cited *Greenwood v. Taylor*, 1 Russ. & M. 185; *Mason v. Bogg*, 2 Myl. & C. 443.

Randall, contrà, said that *Greenwood v. Taylor*, had been questioned, and that in *White v. Bishop of Peterborough*, Jac. 402, the *Master of the Rolls* said that although a mortgagee was certainly entitled to the benefit of his in-

cumbrance, yet the Court must consider the suit as being for the benefit of all parties, and in that case he ordered the costs to be paid out of the fund.

The *Master of the Rolls* said, that there was no reason for charging the mortgagee with any part of the costs of the suit. He had another debt and joined with another creditor for the purpose of realizing the assets of the mortgagor. The mortgaged estate having been sold, he now required payment of his mortgage debt out of the proceeds of sale, but it was said that he ought out of such proceeds to contribute to the expences of the suit. This he could not be called upon to do.

Allen v. Aldridge, February 25th, 1842.

PRACTICE.—PRODUCTION OF DOCUMENTS.

Where a bill is filed for an account of a trust fund, the plaintiff is not entitled to the production of accounts, or documents relating to the private affairs of the trustee unless it can be shewn that such private accounts or documents in some way relate to the trust property.

This was a suit instituted against the executors of a party interested in a trust, which was created by deed in the year 1795, and subsequently operated upon by another deed in the year 1802. The bill charged that the defendants had in their custody divers books, papers, and writings, relating to the matters in difference, and the answer admitted that the defendants had in their possession several documents relating to the trust, and also certain accounts, books of account and vouchers, belonging to the estate of the deceased trustees; but stated that owing to their testator having been dead 29 years, they did not know to what particular transactions such last mentioned accounts, &c. related, though they denied to the best of their knowledge and belief, that they contained any items relating to the trust property. A motion was now made on the part of the plaintiff, for the production of all the documents admitted by the answer which was resisted on the part of the defendants, on the ground that the plaintiff was only entitled to the production of such portion of the documents as clearly related to the trust fund.

Chapman for the plaintiff contended, that as the defendants only spoke as to their belief, with respect to the accounts, which they insisted to be private, the plaintiff was entitled to an order for inspection of the whole and cited *Bannatyne v. Leader*, 10 Sim. 230.

Freeing for the defendants.

The *Master of the Rolls* said, that the part of the motion which related to the private accounts could not be granted. It was not sufficient to charge a defendant generally with having divers accounts in his possession, for if there were any documents relating to the matters in question they ought to be specified, and if it was the duty of the defendant to specify them, they should be brought under the notice of the Court in a proper manner.

Inman v. Tucher, February 21st, 1812.

^a Sir John Cross held that the case was not within the Act 2 and 3 Vict. c. 29, but decided on the points in the argument that the policy was not in the disposition of the bankrupt.

Vice Chancellor of England.

WILL—CONSTRUCTION OF—PRACTICE—MASTER'S REPORT.

Where a bequest was made to the children of the testator's nephew James, and such nephew died in the life time of the testator, without leaving issue, but there was another nephew named Henry, who had children living at the date of the will, and of the testator's death: Held, that the Court would not without very strong grounds, determine the testator to have intended such bequest for Henry instead of James.

The Master having reported in favor of Henry's children, and the Court having allowed the exception against this finding: Held that new evidence might be given before the Master in support of the claim made by Henry's children, on the reference for reviewing his report.

This cause came on for hearing on further directions, and upon exceptions to the Master's report. Andrew Coghlan the testator in the pleadings named, by his will, dated the 14th of March, 1837, gave to his trustees and executors 5000*l.* upon trust, to pay, transfer, and assign the same to and amongst all and every, the child and children of his niece, Catherine Anthony, and of his nephew the late James Coghlan, to be divided between and among them, share and share alike, if more than one, and if but one, to such only child, to be paid to such of the said children as should be a son, or sons on attaining twenty-one, and to such of them as should be a daughter, or daughters, on attaining that age, or marrying: with powers for advancement and maintenance. The testator died the 31st of March, 1837; his nephew James having died without issue in 1821, but several children of another nephew, named Henry, were living at the date of the will, and of the testator's death, and in their behalf it was contended that they were the persons meant under the bequest to the children of James, and that the use of the name of James was owing to a mistake of the testator. Evidence was gone into before the Master, for the purpose of shewing that Henry's children were the legatees intended, consisting principally of affidavits, shewing the state of the testator's family, and also of an affidavit by the testator's widow, who stated that after the will was prepared, it was read over to her by the testator; who asked her if it was all right, observing at the same time, that if any alterations was required, it was not too late to make it, and who further stated that she firmly believed Henry's name had stood in the will instead of James, and that the testator had the same impression. The Master having reported in favor of Henry's children, four exceptions were taken to his report; viz. 1st. Because he had certified that the testator had made a mistake when he coupled, with the gift to the children of his niece, Catherine Anthony, a gift also to the children of his late nephew, James; secondly, because he had certified the testator was aware

there were children of Henry, and therefore, that he could not effect his intention, except by coupling the children of Catherine with the children of Henry; thirdly, Because he had certified that the children of Henry were the persons meant by the testator, in so much of the bequest as referred to the children of James; fourthly, Because he had not certified that the children of the testator's niece, Catherine Anthony, and also the children or child, if any of his nephew, the late James Coghlan, were the persons meant by the said testator, by the description of all and every, the children of his niece Catherine Anthony, and of his nephew the late James Coghlan.

Sir Charles Wetherell and Lovatt, in support of the exceptions, said, that even if this had been a case of competition between two parties claiming adversely, but had been simply one in which the executors had required the direction of the Court for the purpose of giving effect to the will, very strong grounds would have been required to satisfy the Court that a mistake had been made by the testator: but here the question was, whether the testator with a full knowledge of all circumstances necessary to guide his judgment, intended to convey a different meaning to that which was plainly expressed.

They cited *Delmare v Robello*, 3 Bro. C. C. 446.—*Holmes v. Custance*, 12 Ves. 279.

Bethell and Chandless contra, urged that where a testator knows the circumstances, and does not declare his intention according to those circumstances, it may fairly be supposed there is an evident mistake, and this case was clearly within such a rule. Had there been any person to answer the description given by the testator as in the recent case of *Blundell v. Gladstone*,^{*} there might have been some difficulty in supporting the Master's finding, but here there was no person *in esse*, or who could possibly come into *esse*, to answer such description, and it was clear from the evidence of the testator's widow, that the children of Henry were the persons intended to be benefitted.

Walpole for the executors.

The Vice Chancellor said he must first look at the very words of the will, and see if the will was not made by the testator, to a certain extent, in the dark. His honor then read the words of the will before set forth and continued: "These words necessarily lead to an inference that at the time when the testator made his will, he was ignorant whether the objects of his bounty were *in esse* or not. There were two material circumstances of which it was necessary to assume, the testator was aware, and why might not the testator have forgotten one of these circumstances as well as another, or both? He might have intended, the unknown children of James as well as the unknown children of Henry. With respect to the evidence it was of the loosest description. He did not wish to impeach the veracity of the testator's widow, but she seemed to have emptied her whole mind in an affidavit. She

^{*} 21. L. O., p. 456.

stated that the will was read over to her, and that the testator asked her whether she approved of it. Was it not then most extraordinary that with her knowledge that Henry was meant she did not mention it? It was more likely that the testator would know that Henry was the name of the party who so recently died, than that James had died without issue. There was, then, nothing to look to but the words of the will, and the exceptions must be allowed, and the Master must be directed to review his report.

Bethell asked that it should form part of the terms of the reference, that the Master should receive any further evidence that his clients might be capable of adducing, because the effect of allowing the third and fourth exceptions, would otherwise be to preclude the Master from making any further enquiry. This was objected to by the counsel on the other side, but

The Vice Chancellor said, that the parties might have abstained from bringing further evidence, because the Master had expressed himself satisfied, and unless it could be shewn, that all the evidence that could be procured, had been adduced, the claimants ought to have the opportunity of strengthening their case; but it was unnecessary to make any special order upon the subject, as the Master by being directed to review his report, would, as a matter of course, receive such further evidence.

Daubenny v. Coghlan, March 14th and 15th 1842.

Queen's Bench Practice Court.

LIBEL.—RIOT.—COSTS.—5 W. & M. c. 11.

A person injured in a riot, the alleged result of a libel on a political dinner, who prosecutes the persons publishing the libel, is not entitled to his costs as a "party grieved," under the 5 W. & M. c. 11.

The prosecutor in this case, Mr. Thorneycroft, had obtained a side-bar rule for his costs under the 5 W. & M. c. 11, s. 3, which empowers the Court of Q. B. in cases of indictment, where a writ of *certiorari* is prosecuted by the defendant, and the defendant is convicted, to give costs to the prosecutor, "if he be the party grieved." In this case an indictment was preferred against the defendants for a libel on Lord Ingestre, at a political dinner which was to take place at Bilton, in Staffordshire. The libel was charged in the indictment as calculated to produce a riot at the dinner. It was proved that a riot did take place, and the prosecutor was considerably injured on that occasion. The indictment had been removed by *certiorari*, and the defendants had been convicted, whereupon the prosecutor obtained a side-bar rule for his costs. A rule *nisi* having been granted for the discharge of this rule,

R. V. Richards shewed cause, and contended that Mr. Thorneycroft was obviously the party grieved, having sustained injury.

He cited *Rex v. Tompkinson*, 2 B. & Ad. 287; *Rex v. Deunnap*, 16 East, 194; *Rex v. Inhabitants of Taunton St. Mary*, 3 Ma. & Sel. 466.

Ludlow, Serjt., contra. In the cases cited, the injury had been caused to the party obtaining costs, by the act, which was the subject of the indictment. Here the libel formed the ground of the indictment, from which the prosecutor sustained no direct damage.

Cur. adv. vult.

Williams, J.—I can find no case in which a party has been considered as entitled to costs as being the party grieved, unless he has been aggrieved by the subject of the indictment. Here, if the party has been injured, it has been only incidentally to the offence charged on the face of the indictment, because the things complained of was not that which injured the prosecutor. How can I take upon myself to say that there is not sufficient inflammable matter at Bilton, in case of a party dinner, to produce this disturbance, and cause the injury which is the subject of complaint? This application of Mr. Thorneycroft goes beyond any other which has yet been made, and I think that the present rule must be made absolute.

Rule absolute.—*Regina v. Caldecott and another*, H. T. 1842. Q. B. P. C.

NOTICE OF MOTION FOR DISCHARGE OF PRISONER UNDER 48 Geo. 3, c. 123.—R. G. H. T. 2 W. 4, s. 90.—SERVICE OF RULE NISI.

Notice of an intended motion for the discharge of a prisoner under the 48 Geo. 3, c. 123, must be given ten clear days before the intended motion; and a notice of motion on the first day of Term, given eight days before Term began, was held to be insufficient, though the motion was not actually made until after ten days had expired.

Service of a rule nisi for the discharge of a prisoner must be both on the plaintiff and his attorney; and where there are several plaintiffs, service on one is sufficient.

A. Dowling moved for the discharge of the defendant out of custody, under 48 Geo. 3, c. 123, he having lain in execution twelve months, for a debt not exceeding 20*l.* Eight days before Term began, notice had been given to the plaintiff of this motion, which it was intimated would be made on the first day of Term, or so soon as counsel could be heard. The rule of H. T. 2 W. 4, s. 90 (1 Dowl. P. C. 195), required ten days notice, but it was submitted that the defect in the length of notice was got rid of, by the fact that more than ten days had now elapsed since it was given.

Patteson, J.—That will not do. The length of notice required is ten days, and the defendant might have made this application on the first day of Term, although he has delayed it. A rule *nisi*, however, may be taken.

A. Dowling would take the direction of the Court, on whom the rule *nisi* should be served. The attorney must be deemed *functus officio*,

judgment having been signed, and the cause at an end. *Vide Kelly v. Dickenson*, 1 Dowl. P. C. 546; *Gordon v. Twine*, 4 Dowl. P. C. 560. A question also arose whether, there being several defendants, service on all was requisite.

Patteson, J.—The rule should be served both on the plaintiff and the attorney; but as the plaintiffs are joint plaintiffs, service on one of them will be sufficient.

Rule nisi granted.—*Bolton and others v. Allen*, M. T. 1841. Q. B. P. C.

COMMON PLEAS.

PLEADING SEVERAL PLEAS.—4 & 5 ANNE, C. 16.—TRESPASS.

In trespass quare clausum fregit, the defendants sought to plead first, Not guilty; secondly, not possessed; thirdly, that one T. was seized in fee of the close in question, who demised to B., who demised to H., who became bankrupt, and that the defendants entered as his assignees; fourthly, a like plea, only stating that H. mortgaged to one R., and continued in possession as tenant to R., and that the defendants entered as assignees of H.; fifthly, a like plea to the fourth, only stating that H. and R., in order to defraud the creditors of H., demised to the plaintiff: Held, that these were pleas which might be pleaded together, not being in contravention of the Statute of Anne.

Mr. Serjt. *Bompas* shewed cause against a rule obtained on behalf of the defendants, for setting aside an order of *Coltman, J.*, made at Chambers; and for allowing the defendants to plead the above-mentioned pleas; any one of which, in connection with the plea of Not guilty, the learned Judges had ordered might be pleaded. It was contended that the pleas clearly contemplated only one matter of defence, and that the R. G. H. T. 4 W. 4, (2 Dowl. P. C. 312) forbade their being all put upon the record. The plea of not possessed, would obviously raise the questions desired, and the Court would not drive the plaintiff to put in issue a great variety of facts, many of which must be immaterial.

Mr. Serjt. *Manning*, in support of the rule, cited *Morae v. Apperley*, 7 M. & W. 145; 8 Dowl. P. C. 203, and contended that all the pleas were necessary, for unless they were all pleaded, the defendants might be turned round upon some point of title quite beside the question in dispute. The real object was to compel the plaintiff to raise that issue, which was the material one, and the case cited was a distinct authority in favour of the defendants. The case ranged itself under the provisions of the statute of 4 & 5 Anne, c. 16, and not under the rule of Court.

Per Curiam.—The question is, whether it would be an indiscreet application of the provisions of the Statute of Anne, to allow these pleas to be pleaded in conjunction. The first and second pleas may clearly be pleaded. Then can the rest be also put on the record. The fifth plea, in which fraud is alleged to

have been practised by the bankrupt, to which the plaintiff was a party, is obviously allowable, and then the question is, whether only one or both of the other pleas should be pleaded. As we understand the case, the third plea would rely on a title for the whole term in the bankrupt; the fourth plea would proceed on the same term, being in the bankrupt up to a certain time, and then would allege a mortgage by him to another, who granted title to him for a shorter term. We are not prepared to say that, though the pleas may be identical down to the time when the close first came to the bankrupt, there may not be subsequently such a difference in the position of the right of the bankrupt, as set up in the fourth plea, as to entitle the defendants to put both pleas on the record.

Rule absolute.—*Pym v. Grazebrook*, H. T. 1842. C. P.

JUDGMENT AS IN CASE OF A NONSUIT.—SETTLEMENT OF ACTION.—COSTS.

Where, in answer to a rule nisi for judgment as in case of a nonsuit, it was sworn that the action had been settled between the parties in the absence of the defendant's attorney, and there was nothing to shew that the compromise had been effected with the object of defrauding the attorney of his costs, the Court discharged the rule, but directed the costs to be costs in the cause.

Mr. Serjt. *Shew* showed cause against a rule nisi for judgment as in case of a nonsuit. He produced an affidavit, which stated, that an agreement had been made between the plaintiff and defendant, upon which the proceedings were to be stayed, each party paying his own costs, and also an affidavit of the defendant, who swore, that if his attorney was proceeding in the cause, it was without his instructions or authority. It was obvious, therefore, that this was a step taken by the defendant's attorney with a view to his securing his costs. His remedy, however, was against his own client, who had consented to a stay of proceedings, and not by means of such a motion as the present, and the Court would, therefore, discharge the rule.

Mr. Serjt. *Andrews*, in support of the rule, contended that the Court would protect the attorney.

Erskine, J.—The result of the cases is, that the parties to an action will not be allowed to compromise for the purpose of defrauding the attorney, but a case of *bond fide* compromise is different.

Mr. Serjt. *Andrews*.—The plaintiff would be called upon for a peremptory undertaking.

Tindal, C. J.—This is not a case in which we ought to make the rule absolute, more especially as the party has a remedy by carrying the cause down by proviso. But, under the circumstances, the costs may be costs in the cause.

Rule discharged accordingly.—*Payne v. Huredale*, H. T. 1842. C. P.

EASTER TERM EXAMINATION.

The examiners appointed for the examination of persons applying to be admitted attorneys, have fixed *Tuesday*, the 3d *May* next, at half-past nine in the forenoon, at the Hall of the Incorporated Law Society, in Chancery Lane, to take the examination.

The articles of clerkship and assignment, if any, with answers to the questions as to due service, according to the regulations approved by the judges in Easter Term, 1836, must be left on or before *Thursday*, the 21st *April*, with the Secretary of the Law Society.

Where the articles have not expired, but will expire during the term, the candidate may be examined conditionally, but the articles must be left within the first seven days of term, and answers up to that time.

The following regulation is important to notice:

A paper of questions will be delivered to each candidate, containing questions to be answered in writing, classed under the several heads of—1. Preliminary. 2. Common and Statute Law, and Practice of the Courts. 3. Conveyancing. 4. Equity and Practice of the Courts. 5. Bankruptcy and Practice of the Courts. 6. Criminal Law, and proceedings before justices of the peace.

Each candidate is required to answer *all* the Preliminary questions (No. 1); and it is expected that he should answer in *three* or more of the other heads of inquiry.—*Common Law* and *Equity*, being two thereof.

The number of candidates for examination next Term, appears to be 108 only.

COMMON LAW SITTINGS,

In and After Easter Term, 1842.

Queen's Bench.

In Term.

MIDDLESEX.

LONDON.

Saturday.... April 16

Wednesday..... 20

Friday..... May 6

Saturday..... May 7

After Term.

Tuesday..... May 10

Wednesday... May 11
(to adjourn only.)

The Court will sit at eleven o'clock in term, in Middlesex; at twelve in London; and in both at half-past nine after term.

Long causes will be postponed from the 16th and 20th of April to the 10th of May; and all other causes on the lists for the 16th and 20th of April, will be taken from day to day until they are tried.

Undefended causes only will be taken on the 6th of May.

Short defended as well as undefended causes entered for the sitting on May 7th, will be tried on that day, if the plaintiffs wish it, unless there be a satisfactory affidavit of merits.

Causes standing over with judgment of the term in Middlesex, will be taken on the 10th of May.

Until the vacation chambers business is finished, before the Lord Chief Justice, causes will be entered by the Marshal.

PARLIAMENTARY INTELLIGENCE
RELATING TO THE LAW.

THE House of Commons having adjourned to Monday, the 4th April, and the House of Lords to Thursday, the 7th April, we need only refer to the list of Bills relating to the Law given in our last number, p. 431, *ante*.

Lord Campbell gave notice for the second reading of his three bills, on the 11th April.

The *Royal Assent* was given on the 23d March, to the bills relating to Loan Societies, and for the Regulation of Apprentices. These are the only acts bearing on any part of the Law, which have yet been passed.

THE EDITOR'S LETTER BOX.

We are obliged to "Sine qua non," for the friendly trouble he has taken, but his remarks are rather too general. We wish he would specify the instances to which he refers, and we will endeavour to meet his views. The remarks of "An Impartial Bye-stander," may thus be peculiarly useful.

The letter of "Lex," as to the Examination, shall be attended to.

A correspondent enquires whether the sheriff is entitled to poundage when the defendant takes the benefit of the Act for Relief of Insolvent Debtors?

We should prefer receiving the letter of "Scale," before we proceed with his communications.

We are not aware of any case in which it has been decided that a receipt given and dated on a Sunday for money paid on that day would be deemed in law or equity, inadmissible as evidence of such payment.

The letters of "Mox;" H. P.; "Lector;" and T. B. S. have just been received.

The Legal Observer.

SATURDAY, APRIL 9, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

LETTERS

FROM MR. AMBROSE HARCOURT, STUDENT AT LAW, TO MR. THOMAS PRINGLE, OF TRINITY HALL, CAMBRIDGE.

LETTER VI.

Dear Pringle,

I HAVE been working very hard since I wrote to you last, and have been but little in Court. Indeed, as I have already said, attending Court until one is fully qualified to understand what is going on there, is but of little service. Nay, it may do positive harm. It is easy enough to understand much of what is going on. A good speech is enjoyable enough, and many of the other proceedings in a cause are interesting; but it is not in these generally that instruction is to be obtained. It is indispensable, however, to attend Court watchfully, to learn the conventional mode of dealing with witnesses; to pick up the common-place tricks of the trade; to understand practice on minute points not to be found in the books; and to become familiar with the usage and custom of professional life. All these can *only* be learnt in Court; but then the soil must be well prepared before it can receive them usefully: there must be a long course of previous culture before profit can be derived from them. They may, perhaps, be acquired *alone*, and thus a person may persuade himself that he really knows his profession, when he has only got the garish. Nothing, indeed, is more easy than to learn the *slang* of any calling; and I constantly meet with young men, who, so far as mere running talk goes, seem to be very knowing fellows; but if pushed the

smallest degree below the surface of this learned prating, turn out to be hollow pretenders. Now nothing tends to give this appearance of learning, more than a premature attendance in Court, without first acquiring the proper foundation; and I would guard you against it as I have been guarded myself by Mr. Barnaby; for this is not my lecture, but his. In the meantime, I work away with Chitty and Tidd, and am now making some way.

Do not suppose, however, that I shut myself up entirely with these great authorities. I must tell you I went to the House of Lords the other evening, which I must say I consider to be a more satisfactory school of oratory at present than the other House. In the Lords, we now have four Chancellors, all distinguished men, who have all passed through very busy and interesting lives, and who seem (being all, I think, over sixty) as emulous of distinction as boys. There never was, I suppose, a time when the judicial business of the House of Lords had advantages so great as at present. You will always see three, and sometimes four, men engaged in hearing appeals, each of whom would give satisfaction to the suitor, were he sitting alone. Then the legislative business is even more interesting, and I have attended several debates with much instruction.

The Lord Chancellor I have already described to you, sitting in the Court of Chancery. He loses nothing by being followed here. It is here, indeed, that he must feel himself most at home. If he was listened to with the utmost attention when leading on the opposition, it may be supposed that he is not heard with indifference when he rises from the woolsack. His manner, in-

deed, is peculiarly winning; his voice is the most harmonious I ever heard, and a common-place remark—and it must be admitted he utters a great many common-places—coming from him, is redeemed by the grace with which he utters it. At the same time there are some symptoms of age about him; his voice is occasionally tremulous, and his step feeble: and his former arduous life seems somewhat to have shaken his constitution.

Lord Brougham, so far as I can see, has fully resisted the arch enemy. His eye is as bright, his step as elastic, his manner as restless, as ever it could have been. He did not, however, make so great an impression on me as I had expected. I have no doubt that his hearers do not always please him.

"Fit audience let me find, though few,"

must be the conclusion to which all persons who address the House of Lords must come to. It is impossible to deliver heart-stirring appeals to a body diminishing every minute. I have heard of a clergyman preaching himself bare to the sexton; a peer will often speak himself bare to the Chancellor. There will be a pretty good attendance at first, but as soon as it is ascertained there is to be no division, the House begins to get thin; peer after peer walks off; and the House is soon reduced to the front bench on either side. The bishops take early flight, and it seems to become a matter of arrangement who shall be condemned to sit it out. Minister after minister steals away, and the speech is concluded in the presence of the Lord Chancellor, who must stay, the clerks at the table, and perhaps one, or perhaps two peers on either side, and sometimes none at all. Under these circumstances, it is not in the power of man to rouse his energies to their full extent; and it is this, I am persuaded, that oftentimes throws a spell of dulness even over Lord Brougham. It is only due to him to say that he attracts an audience even here more readily than most. On any occasion on which he gives notice of a motion, the House is full at first, and there are often members below the bar from the other House, and elsewhere; but there is here the difference between a premeditated speech, and an occasional one arising out of a debate; and Lord Brougham's peculiar strength, I conceive, lies in the latter. I regret, therefore, not for his Lordship, whose fame cannot be increased, but for myself, that it was not my fortune to hear him when "he wielded at will the fierce democracy."

Next comes Lord Cottenham, who does

not seem willing to speak, except where it is absolutely necessary. His manner is prepossessing and good humoured, with an appearance of great good sense. His utterance is somewhat indistinct, and he affects none of the artifices of the orator. But he goes to the root of the matter, and shews such a shrewd perception of all its bearings, that you cannot fail to be struck by it.

Lord Campbell completes the list, and here I was agreeably surprised. He certainly shews no unwillingness to be heard, but he seems generally well informed. He is an acute and agreeable speaker, with just such a touch of accent as adds interest to his address. To great learning, and no inconsiderable powers of language, he appears to me to add that practical common sense which teaches him what to say, and when to say it. I consider him in no way inferior to any of the others.

Thus freely I write to you of these eminent men, putting down my rough impressions as they occur to me. There are other eminent lawyers in the House, but they occupy an inferior rank, in my opinion, to those I have named.

Your's truly,

AMBROSE HARCOURT.

PRACTICAL POINTS OF GENERAL INTEREST.

BANKERS' CHEQUES.

BANKERS' cheques are instruments *sui generis* in many respects resembling bills of exchange, but in some entirely different. "They are not accepted or indorsed, nor protestable, nor entitled to any day of grace," 3 Burr. 1517, and it was once thought that they were not negotiable generally; but only within the bills of mortality, (*ib.*) and even now, though in fact negotiable and often negotiated, they are not considered as intended for negotiation, and a person takes them from the holder subject to perils, not incident to negotiable instruments generally. *Down v. Halling*, 4 B. & C. 333. It has been hitherto doubtful how far the claim of the payer of a cheque was prejudiced by delay in presenting it. The point has recently occurred, and it has been held *ad nisi prius* that the holder of a banker's cheque ought to present it for payment within a reasonable time, and it is a question for the jury on an issue of due presentment, whether this rule has been complied with. When a cheque drawn on a country banker, dated

19th March was not presented until 6th April, and no cause was assigned for the delay; but the drawee had not sustained loss by the non-presentment at an earlier period, the drawer was held liable to be sued on the cheque, "It is reasonable," said Lord Abinger, C. B., "to allow some little space of time, in the case of cheques on country bankers beyond what is usual in the case of London bankers. If, indeed, any loss had been sustained by the defendant, through the non-presentment at an earlier period, that might make a difference." *Serle v. Norton*, 2 Moo. & Rob. 401; and the reporter's note. It would seem that had this been a London cheque, the delay of a month in the presentation would have prejudiced the right of the payee.

NOTES ON EQUITY.

SMALL LEGACY.

A sum of 11*l.* had been reported to be due to a legatee in respect of his legacy. Mr. *F. J. Hall* asked for an order that it might be paid to the solicitor of the legatee to save the expence of a power of attorney; 10*l.* was commonly directed to be paid to the solicitor. *Brandling v. Humble*, Jac. 48. *Wigram*, V. C. said, he found the rule of the Court established as to the amount to be paid to the solicitor, and he did not think he ought to extend it. *Hawkins v. Dod*, 1 Hare, 146.

MASTER'S REPORT.

Under the 28th order of August, 1841, it is not sufficient for the Master to give a short description of the documents laid before him and then to state his finding, but he ought to mention on which of those documents he proceeded, and shew what were the contents thereof from which he drew his conclusion, and then to state his finding. "I have had a conversation," said his Honor, "with a learned judge, as it had been mentioned to me that a petition had been brought before him, in which the same thing had been done by another Master, that was done in this case; but that learned judge was of opinion that the report which he was asked to confirm was wrong in point of form, and that the Master in that instance had misconceived the 28th order; the real object of which was, not to direct the Master to omit from his report his statement of the grounds on which he

proceeded, but to leave that as it formerly was, and to make this additional circumstance necessary, that when the master does state the grounds on which he came to the conclusion, he shall also state the evidence from whence he deduces those grounds, and that the order was made for preventing disputes, which frequently arise on the master's report on this question, namely, on what evidence does the Master proceed? I really think in this case, it must be sent back to the master to review his report." *In re Grant*, 10 Sim. 573.

THE CERTIFICATE DUTY AND INCOME TAX.

We find there is some difference of opinion amongst the leading solicitors on the subject of the agitation at the *present time*, of the repeal of the certificate duty. A very small minority entertain the notion that the certificate tax is a fit thing for promoting the respectability of the profession, and keeping out the needy and disreputable. This is absurd. Integrity does not depend on the length of a man's purse. Besides, respectability of character is now better promoted by the examination, as well into the conduct, as the capacity, of candidates for admission. Moreover, if the good conduct of the members of the legal profession can only be secured by heavy stamp duties, why are not similar imposts laid on the shoulders of the clergy and the faculty?

Then, it is said, this is *not the time*. The 85,000*l.* a-year carried down, without the expense of the collector, to Somerset House, cannot be spared; and as there is no prospect of immediate relief, the grievance should be borne in silence. Now, we should like to know *when* will be the proper time to claim relief? Must we wait for some convenient season when the money is not wanted? Surely, when a new tax is about to be imposed on all the professions, it may appropriately be said that *lawyers* are already visited with burthens which are not laid on others. The minister should understand, when he is revising the whole scheme of taxation, that his predecessors have done an injustice, for which (though he may not be responsible) it is manifest, at some time or other, there must be redress; either by a repeal, or by extending the impost to other professions.

Next, it is urged, that the profession as a conservative body, ought not to advance any claim which may annoy or embarrass

the head of the government. We believe there is no such intention. He is respectfully requested to examine into the facts, and consider the complaint, and if he finds the case made out, to admit its justice. There can be no annoyance in this course of proceeding. It will be something gained, if the Prime Minister, in his place in Parliament, should acknowledge the existence of the grievance. He has the power to redress it, either now, or at some early period; and if not now, he will candidly state his reasons for the delay, and declare his future intentions. We think that by this course, the government would be strengthened by so much as belongs to the influence of the profession.

A writer in "The Standard," thinks it proper to attempt a laugh at the claim of the attorneys and solicitors, because the present impositions have not prevented their increase. In time of peace all the professions are over-stocked. We suppose that if there were any personal taxes on the editors and proprietors of newspapers, which they had borne during the heat of the war, and required to be repealed when it had long ceased, "The Standard" would have something to say even against its conservative friends. We do not expect, however, come what may of the certificate duty, that Sir Robert Peel will consider it right to treat the subject with levity.

We have received the following communications on this subject, to which we beg the attention of our Readers:

To the Editor of the Legal Observer.

Sir,

Pray accept, for you deserve them, my best thanks for your defence of our professional honor and interest in the leading article of your last week's number. Sir Robert Peel proposes to levy on our hard-earned emoluments, held by a tenure so precarious that to rate them as life interests were mere mockery, a tax commensurate with the duty charged on settled incomes drawn from the fee simple estate, or vested capital, of the landed proprietor or fundholder; yet, what other class throughout the kingdom is subjected to similar extortion? True it is that every man whose income depends solely on his daily labours, and the subsistence of whose family must cease, either with his life or (whichever first may happen) with any accident which incapacitates him from exertion, is wronged by the proposed exactions; but to none, save the attorneys of Great Britain, is an equal measure of injustice dealt, for no other class of our fellow-subjects are at once subjected to a heavy annual certificate duty and an inquisitorial income tax.

But we are assured the impost will be temporary. In 1785, the minister proposed as a *temporary war tax*, his certificate duty of 5*l.* per annum,* but in 1804 it was doubled, and in 1815 further increased, and to the present time has remained unmitigated. So much for financial pledges.

"Their promises, were as they then were, mighty, But their performance, as they now are, nothing."

Surely, if we are again duped into unresisting acquiescence, we richly deserve to be again defrauded.

Let us examine, for a moment, the practical results of the new measure. In your number for the 19th ultimo, you, Sir, computed the "average clear income of the attorneys and solicitors of England and Wales at 300*l.* per annum." I am confident your estimate was rather beyond than below the truth. Deduct from their annual 300*l.* the 12*l.* imposed on the Metropolitan attorneys, and you will find that they already pay an income of 4*l.* per cent., while the annual 8*l.* taken from their provincial brethren, subjects them to a deduction of 2*l.* 13*s.* 4*d.* per cent.; then adding to this the proposed new duty, you have in the one case 7*l.* and in the other 5*l.* 13*s.* 4*d.* per cent. annually wrung from the average earnings of men, who, besides expending a little fortune on their professional education, have already paid in stamp duties on their articles and admission, a sum never less than 150*l.*, and much more frequently exceeding 200*l.*, and this too, at a period, when, by the proposed establishment of local courts, with a diminished scale of fees, the remuneration of the regular practitioner is to be reduced, and in many instances almost annihilated. It must be allowed on all hands, that no class of men have hitherto surpassed the members of our profession in attachment to the doctrines professed by the present administration, that for centuries, and alike through good and bad report, the decided leaning of the English lawyer has been towards conservatism. Surely then, it is impolitic to single him out for unequal and unjust taxation, treat his remonstrance with cold indifference or ribald scorn, and drive the man who, if fairly treated, would cheerfully contribute his full contingent towards the exigencies of the state, to adopt, in bitter earnest, the playful sarcasms of the poet:—

"To public uses—what a whim?

What has the public done for him?

Sir, this new impost appears to have been pro-

* Before the Certificate Act, the only stamp duty imposed on attorneys and solicitors was that of 6*d.* in the pound, where the premium paid with a clerk did not exceed 50*l.*, and 1*s.* in the pound when more than 50*l.* In 1794, the stamp duty of 100*l.* was laid on articles of clerkship, increased in 1804, to 110*l.* and in 1815 to 120*l.* In 1804, the admission duty of 20*l.* was imposed, and in 1815, it was increased to 25*l.* En.

jected for the purpose of conciliating the very wealthy and extremely poor, at the expence of the laborious and overburdened middle classes. The opulent landholder or capitalist, regard it with complacency, or at all events with small concern; it entails on them no suffering or sacrifice;

"Their life's diversions will be just the same Before and after *Income taxes* came"—

while the operative who escapes direct contribution is cheated into the belief that he avoids the impost altogether; but the merchant, the trader, and the professional man, who, with the acquirements and rank of gentlemen, are compelled by incessant struggle and harassing economy to support on slender incomes, a respectable appearance, and provide by heavy life insurances against leaving those most dear to them destitute on their decease; to these men already overtaken, the fresh impost threatens the most severe privation. And if ruin be the consequence, it is rather to be wished than to be expected, that they will consent to fall alone.

LEGALIS.

The certificate duty (the repeal of which you have so frequently advocated,) is in itself a most obnoxious tax, levied directly upon the industry of the practitioner, unjust in principle, and in its assessment most unequal. If this war tax must be continued, let the burden of paying it fall on the shoulders of those who reap the profits (such as they are,) of the profession in an equal ratio. The attorney who gains 4000*l.* per annum by his practice, pays not one single shilling more than the man who gains so many pence. Is this right or just? I have often heard surprise expressed, that the members of the profession do not unite, and petition the legislature for a total repeal of the duty; but the truth is simply this, the *leading influential members* do not feel the duty: to them 12*l.* per annum is an insignificant tax, and I have heard many a rich attorney say, he wished it were doubled or even trebled: then even *he* would not feel it. And when I asked the reason for these good and benevolent wishes, the answer has invariably been, "it would tend to cut down the number of attorneys, and (forsooth) add to the dignity of the profession;" in other words, make the practice of the profession a perfect monopoly. I do not mean to fix the whole body of the profession with this stigma, for I have seen the signatures of a few high-minded and honorable attorneys appended to petitions for repeal of this odious tax.

Sir Robert Peel, a lawyer himself, with his acute eye, sees at a glance the mutiny in our ranks; and he says, I must fix the lawyers with my new income tax; there's no danger of their uniting to protest against it; they are an easy prey; I shall have scarcely any difficulty with the docile crew; see how complacently they bear the poll tax, how good humouredly they contribute the certificate duty!

Having pointed to the grievance, allow me to suggest a *partial remedy*. Presuming that the certificate duty is still to be exacted, I propose that a small sum, equivalent in the gross receipt to the present amount of duty, be charged to each attorney, on his commencing a suit either at law or equity:—say 5*s.* upon every Common Law writ, and 5*s.* more upon every judgment signed. In Equity, the like charges upon filing the bill, and upon the decree. There need not be a single shilling expended in the collection of these fees, because they can be received by the officers of the Courts appointed to collect the present charges on those proceedings. I, for one, should not object to this mode of assessment, provided always that we must submit to pay the certificate duty.

T. W. H., ONE, &c.

We extract the following from a statement of the reductions which have taken place of late years, in the emoluments of the profession; and which should be taken into account in considering the repeal of the Certificate Duty.

During the last ten years, several Bills have passed the legislature and become Laws, whereby the interests of the Profession have been assailed, and in several instances materially injured. Amongst others, are—

1. Lord Brougham's Act (1 & 2 W. 4, c. 56), whereby the general body of the Profession were deprived of the privilege of acting as Commissioners of Bankrupt, to the exclusive advantage of barristers and a very few solicitors, selected by reason of their influence or interest in high quarters.

2. The Act 3 & 4 W. 4, c. 42, authorising the Trial of Causes for Debts under 20*l.* before the Sheriff.

3. The Act for the Abolition of Fines and Recoveries, (3 & 4 W. 4, c. 74) thereby giving the appointment of commissioners for taking the examinations of married women to a select few of the solicitors.

4. The several acts for establishing Courts of Request, thereby permitting the recovery of debts, amounting (in many instances) to 15*l.* a-year, without even the assistance of an attorney.

5. The Abolition of all Leases for a year in the Transfer and Conveyance of Freehold Lands, made law by the statute 4 Vic., c. 21.

These "Reforms" may not have materially affected some members of the Profession, and those who have been provided for by clerkships and commissionerships, but they have unquestionably *greatly injured* a most active and meritorious part of it.

During the progress of these measures, the just and equitable consideration of compensation for all these losses was in no way pressed upon the legislature.

Amidst all these changes, the Profession has hitherto cheerfully paid the Annual Certificate Duty, a tax imposed on no other profession.

The Premier, by the imposition of the Income Tax, will have a surplus income, and to this the Profession will largely contribute; he has already proposed to remit several oppressive taxes, and the attorneys and solicitors are now fairly entitled to call for a remission of their Annual Certificate Duty, at the least—a small compensation only for the losses they have already suffered by the measures passed for the benefit of the public.

LOCAL COURTS.—NEW JUDGES.

We observe by the Cause Papers and Calendars at Liverpool, that Mr. Baron Parke and Mr. Baron Rolfe have had exceedingly onerous duties to perform, that they are still engaged there, and will scarcely complete their labours in time to resume their seats on the bench in Easter Term. Many of the actions tried at Liverpool are important mercantile cases, and demand much time and attention. The Calendars also at Liverpool and Chester are unusually heavy, comprising numerous offences of the deepest dye. The pressure of business unavoidably occasions a disposition on the part of the Nisi Prius Judge to recommend many causes to be referred to arbitration, although the parties on one or both sides wish them to be decided by a jury, under the direction of the Court. After incurring all the expence and anxiety of preparing for trial, they are, in effect, driven into a reference, for the recommendation or suggestion of the Judge cannot prudently be disregarded. These forced references constitute a great grievance. Yet the Judges are not to blame, for it is generally better to have a cause referred than made *remanet* to the next assizes. The Judges ought not to be obliged to resort to these expedients for getting through their Cause Lists. Neither should they be compelled to continue their sittings late in the evening. The judicial business should be better distributed, and leisure afforded at due intervals. The Judges should have, not only their full long vacation, which of late years has been much curtailed, but a due season of repose both at Christmas, and before Easter Term.

In referring to the distribution of judicial business, we would ask, why should there be four learned judges sitting in each of the three Common Law Courts, to dispose of matters frequently of small moment, and little difficulty, when in the Equity Courts one Judge is deemed competent to decide on questions involving large amounts of property, and the most important doctrines?

Looking at the state of business on the circuits, and at the arrears of business at Westminster, especially in the Court of Queen's Bench; and considering the supposed demand for the better administration of justice, in cases of small amount, we are induced again to notice the recent suggestion of appointing *additional judges*, whereby trials in the country may take place more frequently, and at less expence. We look, however, in vain for any record in parliament, by petition or otherwise, for the establishment of local courts. There can be no doubt, however, that the business of the Common Law Courts is now five, or perhaps ten times as much as it was anciently, when twelve judges were deemed necessary. If new judges or commissioners were appointed to hold additional *circuit courts* for the trial of cases not exceeding 15l. or 20l., all that can reasonably be required would be attained. The proceedings would originate in the Superior Courts at a reduced expence, and by the controul of those courts, the law and practice might be kept in a satisfactory and uniform state. We, some time ago, adverted to a rumour of a plan like this, and conceive, if any further change must take place, this would be the proper course; and one of the advantages would be, that if the additional judges were not found necessary, no successors need be appointed.

PRESUMPTION OF SURVIVORSHIP.

DECISIONS OF THE ECCLESIASTICAL COURTS.

A. and *B.* embark in the same vessel for the Cape of Good Hope; the vessel sails and is never more heard of. By reason of the consanguinity, or affinity, of the parties, it becomes necessary, in order to distribute their property, that it should be determined whether either and if either, which of the two ought to be presumed to have been the survivor: by what means, and upon what principles, shall this question, which, in the language of Mr. Fearn, seems to mock every effort of human ingenuity, be solved?

The civil law was singularly comprehensive and particular upon this subject, (see Digest, lib. 34, de Commorientibus,) and though it adopted the principles of presuming the original owner of the property in litigation to have survived, it nevertheless, in certain cases, had recourse to presumptions arising from the comparative strength of the parties: thus if a mother and son perished together by shipwreck the son, if adult, was presumed to have survived her; (Digest, lib. 34, t. 22) but if of tender age, to have died in her lifetime, (ib. tit. 5, s. 23.)

The French code (art. 720, *et seq.*) is no less explicit upon this subject than the Roman : it declares that where the circumstances of the event are such as to preclude a more certain principle of decision, the judgment is to be guided by the strength of the *age and sex* of the lost individuals ; and the relative proportions of strength it affects minutely to ascertain, providing that where the presumption is dependent upon age, persons who have not attained the age of fifteen years, or who have passed that of sixty, shall be supposed to have predeceased persons whose periods of life are between these ages : and that persons under the age of fifteen years, shall be presumed to have survived those whose age exceeds sixty. For cases, however, in which the *special* rules as to age are insufficient to determine the question, a *general* rule is provided, declaring that when the sex of each is the same, the younger shall be presumed to have survived the elder.

The imperfection of these rules of the Code Napoleon is glaringly manifest ; the presumptions made in obedience to them must as frequently contradict the hidden truth as accord with it. All other considerations than those of age and sex seem prohibited, for though attention is first required to be given to the "circumstances of the event (*du fait*)," it would seem that that expression, correctly interpreted, includes only facts occurring at the time of the accident, and not the usual bodily status, far less the acquired powers, of the parties ; and this is confirmed by the fact, that in case of failure of such "circumstances," the judge is required to recur to the strength of the age and sex, which would themselves be, according to the contrary construction, "circumstances *du fait*." The consequence of these rules, therefore, must be, that a court is bound to presume, that a weak unhealthy youth of sixteen, has survived a robust man of thirty, and that a hale man of sixty years has been survived by a child of seven, nay, according to the literal construction of the articles, by an infant at the breast ; at least if this latter construction be improper, the undeterminate and ambiguous nature of the provisions have given it the same title to reception in this instance as in others, to which it must clearly be applied. It may be further remarked, that the code in no case admits a presumption that the female sex may survive the male, but supposes that a strong woman in the prime of life struggles with less energy against her fate, than a decrepid octogenarian dotard of the opposite sex. Moreover, even in cases where neither of the parties is subject to extraordinary infirmity, it cannot be doubted that the supposed survivor must often have predeceased his companion, for where health and strength are equal, survivorship must depend either upon acquired skill, or upon accidents with which a Court can by no means become acquainted, and never upon the established criterion, namely, a few years difference in age ; and where strength is, through difference in age, unequal, though it be reasonable to suppose that men between twenty and

forty, survived men between forty and sixty, it is nevertheless directly at variance with natural presumption to suppose, that the former class of persons were survived by youths between fifteen and twenty.

It is, therefore, not to be regretted that such provisions as these have never been adopted in this country. The English laws are indeed, peculiarly indefinite in this respect ; a circumstance which may perhaps be ascribed to the nature of their origin and formation. So profoundly silent were they upon this head, that in the case of General Stanwix, (Fearn's Posthuma, and S. C. non. R. v. *Dr. Hay*, 1 W. Bl. 640) which was believed to be the first in which the question arose, Lord Mansfield declared that *there was no legal principle* upon which he could decide it, and accordingly he recommended a compromise, which was effected, (per Sir W. Scott, in *Wright v. Netherwood*, in note to *Taylor v. Diphock*, 2 Phill. 201, and in S. C. 2 Salk. 593, n.)

Since this case, however, the question has repeatedly arisen, and the Courts have found it necessary to adopt some principle of decision ; and though no certain and comprehensive principle seems yet to have gained the authority of a rule, the cases tend strongly to approximate our law to that detailed in the Digest. The ecclesiastical courts have from the nature of their jurisdiction, been more frequently subjected to the necessity of encountering the difficulty than the temporal.

The first direct case in those Courts was *Taylor v. Diphock*, 2 Phill. 201, which came before Sir John Nicholl in the Prerogative Court, in the year 1815 ; there a husband, having by his will appointed his wife his executrix and residuary legatee, was drowned in the same vessel with her ; Sir John Nicholl granted administration to the husband's effects to his next of kin in preference to those of the wife, saying, the burthen of proof lay in the latter to shew that the husband left a residuary legatee, and that the presumption of law was in favor of the parties on whom the law would throw the right ; and he referred to the Civil Law as making the same provision, (Dig. lib. 34 t. 9, s. 3). The learned judge, however, after referring to the strength and active habits of the parties respectively as shewn by the evidence, used the following remarkable expression, "looking to their comparative strength, there is nothing to take away the ordinary presumption that a man was likely to survive a woman in a struggle of this description, still less is there anything to prove the contrary."

It is observable that in the preceding case, two principles of decision were referred to by the Court : firstly, that of throwing the *onus* of proof of survivorship upon the representatives of the party, who would never have had any interest in the property in litigation if he or she were not the survivor ; and secondly, of drawing a presumption from the relative strength and habits of the parties ; the second indeed, did not seem to have been used, even as an auxiliary, but was referred to merely

for the purpose of shewing, that even if (as had been urged at the bar) it were the proper principle of decision, it would require him to pronounce the same judgment as the former; both principles, however, were treated as proper for application in suitable circumstances, and it may be remarked that the example cited from the Digest may be attributed to either principle, the former being in terms referred to, and the latter being applicable to the case, and elsewhere recognised by the same law in a statement of the same example. (Voet in loc. D. 23, 4; 26 Domat in loc.)

The question again arose, as between husband and wife, in *Colvin v. H. M. Proctor General*, 1 Hagg. 92. Prerog. 1827, and administration to the husband, who was a bastard, was granted by the Court to one of his creditors, saying, that "the *primâ facie* presumption of law was that the husband survived." Again it arose in *goods of Murray*, 1 Curt. 596, Prerog. 1837, where administration to the husband was granted by Sir Herbert Jenner as to a widower, "there being nothing to shew that the wife survived, and her next of kin consenting."

In these cases, as in *Taylor v. Diplock*, both of the principles above mentioned concurred in supporting the decision pronounced, it was therefore unnecessary for the Court to declare to which of the two preference should be given in the event of their conflicting.

In *Goods of Selwyn*, 3 Hagg. 748. Prerog. 1831, (which though earlier in date, has, on account of its peculiarity, been postponed to the case last stated) husband and wife had perished together under similar circumstances, he having appointed her his executrix "if living at his decease," the Court granted probate of his will to executors substituted "in the event of her dying in his lifetime," saying "in the absence of clear evidence it has generally been held that both died at the same moment, and it was so held in *Taylor v. Diplock*;" and further "without going into the general presumption that the husband was the stronger, and therefore survived, the intention is so clear that whatever may be the construction in other Courts, I shall decree probate to the substituted executors in common form, the next of kin (i.e. of the wife) not opposing, and having power hereafter to call in the probate and contest the point." The question arising in this case was one of peculiar nicety, and bore a strong resemblance to one which came before Sir William Wynne in *Wright v. Netherwood*, before referred to, where that learned judge held that a man who was drowned together with his wife and their child had neither wife nor child (that is of his second marriage) living at his death, and therefore that a will executed by him during a former marriage was not revoked by his subsequent marriage and birth of issue.

It is to be observed, that in *Goods of Selwyn*, as well as in *Colvin v. H. M. Proctor General*,

and *Goods of Murray*, both of the principles mentioned by Sir John Nicholl in *Taylor v. Diplock*, tended to the same judgment; at last, however, it became necessary, in a case where they were at variance, to determine which of the two should overrule the other. In *Satterthwaite v. Powell*, 1 Curt. 705, husband and wife having been drowned together, the question was, whether administration to the wife's effects should be granted to her next of kin or to the representatives of her husband. The dictum of Sir John Nicholl, with respect to the ordinary presumption being that a man would survive a woman, was pressed upon the Court, but Sir Herbert Jenner said, "it appeared to me that this point was settled; the principle has been frequently acted upon, that, where a party dies possessed of property, the right to that property passed to his next of kin, unless it be shewn to have passed to another by survivorship. Here the next of kin of the husband claims the property which was vested in his wife; that claim must be made out; it must be shewn that the husband survived. The property remains where it is found to be vested, unless there be evidence to shew that it has been divested. The parties in this case must be presumed to have died at the same time, and there being nothing to shew that the husband survived his wife, the administration must pass to her next of kin."

The primary and overruling principle established by these decisions in the Ecclesiastical Courts, seems most rational and satisfactory. It must be confessed, however, that the judgments delivered in propounding the doctrine do not exhibit the desirable precision; nor indeed are they uniformly consistent; for the court, not content with declaring that where a person dies possessed of property, that property will devolve upon his next of kin, (i. e. those clearly surviving him), unless it be proved to have passed to another by survivorship, has sometimes added, that the possessor of property must be presumed to have been the survivor, and sometimes, that both parties must be presumed to have died together; and thus the more natural and satisfactory reason has been obscured, and absurd results may ensue; for if the former presumption be adopted viz. that the possessor of property survived, then the Court would, in the event of both parties being possessors of property, be one day determining that *A.* survived *B.*, and on the next that *B.* survived *A.* And if the Court has recourse to the latter supposition, viz. that both died at the same moment, it will have to enjoy the satisfactory assurance, that it is continually making a presumption which is always contrary to the truth.

The above, it is believed, are all the authorities to be found in the Ecclesiastical reports upon this subject. We shall take an early opportunity of noticing the cases which have arisen since that of General Stanwix, in the Temporal Courts.

"THE GRANDEUR OF THE LAW."

MARQUESESSES.

1. **CHARLES INGOLDESBY PAULETT**, Marquess of Winchester, Earl of Wiltshire, and Baron St. John of Basing: Premier Marquess of England.

The law puts in a double claim to this title: one of the Marquess's ancestors having been serjeant at law in the reign of Henry V.; and another, (the first marquess) Keeper of the Great Seal under Edward VI.

The lordship of Pawlett is near Bridgewater, in Somersetsshire; and the name is supposed to have been first assumed by Hercules, Lord of Tournon in Picardy, who came into England in the reign of Henry II., and who was lord of this manor. His successors were men of estate and condition during several of the succeeding reigns. One of these, Sir John Paulet, of Paulet, and of Gotehurst in Somersetsshire, flourished under Richard II., and left two sons, *viz.* Sir Thomas Paulet, from whom the present Earl Paulet is descended; and William, who was called to the degree of a Serjeant at law in 1416, (claus. 3 Henry V, m. 20) and described himself of Melcomb Paulet, in Somersetsshire.

William's son, Sir John, married the granddaughter and co-heir of Sir Thomas Poynings, Lord St. John of Basing, and their great grandson, Sir William, was the Lord Keeper.

Sir William Paulet held successively the offices of Comptroller, and Treasurer, of the Household, and Master of the Wards, under Henry VIII., who advanced him, by patent, dated 9th March, 1538-9, to the dignity of a baron, by the title of Lord St. John of Basing, and on April 23, 1542, added the Order of the Garter. That king appointed him one of the executors of his will, and he consequently became one of the Council of his successor, Edward VI., of which he was appointed the President. He also held the office of Lord Great Master of the Household, in which he is noticed by Stow (London, p. 74) as having many retainers, and distributing great charity.

On the 29th June, 1547, the Great Seal was delivered to him (Pat. 1 Ed. 6, p. 4) and he

held it until Richard, Lord Rich was appointed Lord Chancellor on the 30th of the following November, a space of only four months, and those principally in the vacation; so that he had little opportunity of exhibiting his capacity as a Judge.

On January 19, 1549-50, he was created Earl of Wiltshire, and on Feb. 3, was appointed Lord High Treasurer; in which office he continued under Queens Mary and Elizabeth. On October 12th, 1551, King Edward added the marquissate of Winchester to his titles.

He lived to the 97th year of his age, and died on the 10th of March, 1571-2, at Basing, Hants, a magnificent mansion erected by him.

No one can doubt the abilities of a man, who could obtain and preserve the confidence of four sovereigns, in such perilous times; though many will be satisfied with his own solution of the difficulty, that he did it "by being a willow, and not an oak."

He married Elizabeth, daughter of Sir William Capel, Lord Mayor of London; and by her he had four sons and four daughters.

The sixth marquess, on April 9, 1689, was created Duke of Bolton, which title became extinct after a succession of six dukes, by the death of Harry, Duke of Bolton, on Dec. 25, 1794, without male issue; but the marquissate survived in the father of the present Marquess, the great grandson of the fourth Marquess's second son, Lord Henry Paulet.

2. **GEORGE FERRARS TOWNSHEND**, Marquis of Townshend, Earl of Leicester, Viscount Townshend of Rainham, Baron de Ferrars of Chartley, Compton, Townshend of Lynn, and a Baronet.

Sir Roger Townshend, a judge of the Common Pleas, in the reigns of Richard III. and Henry VII., is the ancestor of the present Marquess.

The name of Townshend was assumed by Lodovic, a Norman, who came into England in the reign of Henry I., and by marriage became possessed of the Manor of Havile in

Rainham, in Norfolk, where the family has continued ever since to reside.

Roger, the sixth in descent from him, was the only son of John, who died the 4th Oct. 1465, and Joan, daughter and heir of Sir Robert Lunsford, of Rumford in Essex, and Battle in Sussex. He studied the Law at Lincoln's Inn, where he was Lent Reader, 8 Edward IV., and Double Reader 14 Edw. IV. In the 12 Edward IV. he was M.P. for Calne in Wiltshire. In October, 1477, he was called to the degree of the Coif (Claus. 17, Edw. IV.,) and the day after the accession of Richard III. was appointed King's Serjeant. In 2 Richard III., he was constituted one of the judges of the Common Pleas, in which office he was continued by Henry VII., from whom he received the honour of knighthood. He died in 1439, and was buried in the chapel of St. Catherine, in the Church of St. Mary, Raynham, where his tomb now exists, but with no inscription.

By his marriage with Anne, the daughter and co-heir of Sir William de Brewse, of Wenham, Suffolk, Knt., he acquired considerable property, and had six sons and four daughters.

His eldest son, Sir Roger Townshend, having died without issue, his second son, John, became the head of the family. The 4th in descent from him, Sir Roger, was created a Baronet April 16th, 1617, whose second son, Sir Horatio, (the eldest dying an infant) assisted in the restoration of Charles II., and was raised by that monarch to the peerage April 20th, 1661, with the title of Baron Townshend, of Lynn Regis. He was advanced to the dignity of Viscount Townshend, of Raynham, Dec. 11, 1682, and George III. added the Earldom of Leicester 18th May, 1784, and the Marquisate Oct. 27, 1787.

See also Viscount Sydney.

3. JAMES BROWNLOW WILLIAM GASCOIGN CECIL, Marquess and Earl of Salisbury, Viscount Cranbourn, and Baron Cecil of Essendon.

The founder of the fortunes of the family of Cecil, was that great statesman Sir William Cecil, Lord Burleigh, Lord High Treasurer

to Queen Elizabeth. The right to insert his name in this catalogue arises from his having on two occasions during this Queen's reign held the office of first Lord Commissioner of the Great Seal.

Of an ancient family in Herefordshire, whose name was variously spelled Sitealt, Seisel, Sitealt, Cysseil, and Cecil, Sir William was the son of Sir Richard Cysseil, one of the pages of Henry VIII., and afterwards one of the Yeomen of the Wardrobe, and Jane, the daughter and heir of William Heckington, of Bourn, in Lincolnshire, Esq. He was born at Bourn, on the 13th September, 1520, and in 1535 was entered of King's College, Cambridge.

It would be impertinent in this place to give any lengthened particulars of a life which belongs to the history of his country. It is only necessary to state so much as is applicable to the present object.

It is a curious fact, that, however slender may be our claim to place him in a catalogue of lawyers, he was originally intended for the profession, studied at Gray's Inn, and had the grant from Henry VIII. of the reversion of the office of *Custos Breveium*. His talents, however, were soon discovered, and, deserting the law, he was called upon to exercise them on a wider theatre.

He was Master of the Requests, and Secretary of State, under Edward VI., by whom he was knighted in 1551, and sworn of the Privy Council. On the accession of Queen Elizabeth he was again appointed Secretary of State. In 1561, he obtained the place of Master of the Ward, and in February, 1571, was raised to the peerage by the title of Baron of Burleigh. The Order of the Garter was added in June, 1572, and in the following September he was appointed Lord High Treasurer.

Sir Christopher Hatton, the Lord Chancellor, dying on November 20, 1591, the Great Seal was put into commission; and Lord Burleigh was the first of the four commissioners. They held the seal till the appointment of Sir John Puckering as Lord Keeper, on May 28th, 1592, being assisted in hearing causes in Chancery by four of the judges named for that purpose. Again, on the death of Sir John Puckering in 1596, he held the same appointment till the 6th of May, when the seals were

given to Sir Thomas Egerton. He died on August 4th, 1598.

His first wife was Mary, daughter of Peter Cheek, and sister to Sir John Cheek, Knt., by whom he had a son, Thomas, who succeeded him in his title, and was afterwards created Earl of Exeter.

His second wife was Mildred, daughter of Sir Anthony Coke, of Giddy Hall, in Essex, Knight, who was preceptor to Edward VI, and by her he had several children, of whom

the eldest was the famous Sir Robert Cecil, who, even in his father's lifetime, held the important office of Secretary of State. Soon after the accession of James I, he was created Baron of Essendon in Rutlandshire, (May 13th, 1603) then Viscount Cranbourn, in Dorsetshire, (August 20th, 1604) being the first Viscount who bore a coronet, and lastly Earl of Salisbury, (May 4th, 1605.) The 7th Earl was created Marquess, 24th August, 1789, by George III. See also the Marquess of Exeter.

Communications are requested to be addressed to "F. S. A.," care of the Editor.

SELECTIONS FROM CORRESPONDENCE.

LEGAL EXAMINATION DISTINCTIONS.

To the Editor of the Legal Observer.

Sir,

Allow me to express my dissent from the opinions of your correspondent, R. W. S., in his letter at p. 393. Did I for one moment entertain an idea in common with him that the distribution of legal honours, which I have before advocated, (p. 188) would in any manner cause the disgraceful system of "*cramming*" to be resorted to, I certainly had never taken upon me to recommend them. The practice is one which ought strenuously to be discountenanced, since it robs the real student of the credit of his studies, and sends forth upon the world incompetent and shallow persons, incompetent to the discharge of the duties of the profession. But I am far from thinking that the awarding of legal honours would tend to increase this system, and your correspondent, by referring to it, has rather added an argument favourable, in my opinion, to their adoption.

He imagines that the steady readers would not pass their examinations so brilliantly as those who adopted the cramming system. But, Sir, I apprehend that no lengths to which this latter practice can be pushed, will ever put a candidate for distinction upon an equal footing with one who has read steadily during his clerkship, and at the same time has not neglected the practical parts of his profession. The utmost success of the *forcing* system would be to enable its votaries to *pass*, and escape the serious disgrace of a rejection, but it would be far from forwarding any one who might aspire to the prize due to superior merit. This can never be borne off by merely superficial attainments. "*Cramming*" is much resorted to at the Universities, but it has, I believe, never availed those who employed it any further than tamely helping them through their examinations, and in no ways facilitating the taking of a degree; while at these ordeals the particular branch upon which the student will be examined, is much better known beforehand than at ours.

But I do not suppose that if any prizes should be ultimately decided on, the examinations will be conducted precisely as at present; indeed it is not fitting that they should. I trust that other branches will be added to those at present selected. I do not wish to throw hardships in the student's way, but I really think that some plan must be adopted, to prevent the respectability of the profession being altogether overturned by that swarm of men who daily seek admittance to it, actuated solely by, and perhaps scarcely capable of entertaining any other feeling than the one prevailing, greediness of gain.

A heavy blow will be struck at the respectability of the law, should the local court bill be passed. Beer-house attorneys who foster litigation, and dispense law as a hawk does his wares, at the lowest charge, will be sadly increased, and I do say that any method which will tend to resist these attacks, and preserve the respectability of the profession, will be indeed a boon. I would see the study of our laws elevated far above that avaricious spirit which induces so many to commence it, and I know no more effectual method of attaining this end, than by enlarging the minds of those who seek it, by the studious perusal of the classics and of the history of their fellow-creatures, and by making a knowledge of the principles of law an indispensable branch of their attainments.

ÆMULUS.

SUPERIOR COURTS.

Vice Chancellor of England.

PRACTICE.—SUPPRESSION OF DEPOSITIONS.

The Court will not permit the parties in a cross cause to examine witnesses in such cause after publication in the original cause has passed, and if any witnesses are so examined their depositions will be suppressed.

In this case, original and cross bills had been filed, and a motion was now made to suppress the depositions taken in the cross cause on the ground that the witnesses had been examined subsequently to publication passing in the original cause. It appeared,

that previous to the witnesses being examined notice had been given on the part of the plaintiff in the original suit, that objection would be made to such examination, and that in case it was persisted in, application would be made to the Court to have the depositions suppressed. The plaintiff notwithstanding, proceeded with the examination, and hence the present motion.

Stuart and Parry said, that if the course which had been pursued in this case were sanctioned, the defendant in the original suit might always wait until he had seen the plaintiff's case, and then shape his evidence so as to meet that case, a practice which the Court never permitted. Here the party had full warning, that if he went on in defiance of the usual practice, the present application would be made, but he chose to proceed, and must now bear the consequences. Even before the Master, where much greater latitude was allowed in the examination of witnesses, a party whose evidence had been taken before the examination, could not be examined again before the Master, without the special leave of the Court, and the Court seldom shewed a disposition to favor the practice. *Sawyer v. Bower*, 1 Bro. C. C. 388; *Conethard v. Hanted*, 3 Mad. 429; *Purcell v. Mc Namara*, 17 Ves. 434.

Teed and Rogers, contra, insisted that great injustice would be done to the defendant if the motion were granted, for his case had in like manner been exposed, and he had relied upon his case being presented to the Court in the form which under advice he had adopted. It was impossible that any improper advantage could have been taken of the circumstance of publication having passed, for it was sworn by the defendant's solicitor, that he had never seen the depositions in the original cause until after the evidence was completed in the cross cause. The plaintiff also in the original suit knew that the defendant was going on examining witnesses, and with this knowledge, he himself examined witnesses in the cross cause, about whose deposition nothing was said. They cited *Scott v. Algood*. Pract. Peg. p. 87. *Narcutt v. Worsley*, 1 Chanc. Ca. 237.

The Vice Chancellor said he must make the order according to the notice of motion. Lord *Thurlow* had made an order under similar circumstances, and he thought the rule laid down in the case before his lordship, was the proper one. Where a party puts upon the files of the Court a bill, or anything else which ought not to be there, the course of the Court was to order it to be taken off the file. So where a supplement bill introduced new matter, seeking to alter an original decree, or where leave was given to file a bill, containing certain statements, and matters of a different description were introduced, the same course was pursued. Although no actual impropriety might be intended, the practice of the Court was to order the suppression of proceedings when improperly taken, and therefore such portions of the depositions must be suppressed as related to matters in issue in the original cause.

Teed objected that some portions of the depositions related to matters not in issue in the original cause, and submitted that those portions should be preserved, but

His Honor said, that if they were at all connected with any such matters, they must be suppressed, but if this connection could be disproved, that might induce the Court to alter the order as to theirs.

Scott v. Pascoe, March 19th, 1842.

Vice Chancellor Wigram.

PARTNERSHIP.—EXECUTOR.—SHARE OF PROFITS.—SURVIVING PARTNER.

Where a surviving partner, who is also executor, allows the capital of the deceased to remain in the business, and pays a portion of the profits less than his late partner, in his life, would have been entitled to, and also 5l. per cent. interest upon the capital of his partner and testator, to the widow and children. Held, notwithstanding that the children of the deceased partner are entitled to inquiries and accounts respecting the state of the property at, and subsequent to, the death of their parent, before the Court will decide upon the exact proportion to be accounted for.

THIS was a bill for an account, and for payment, of seven-tenths of the profits of the business of a picture-frame maker. The defendant was the surviving partner, and one of the executors, of Gerard Willets, who died in 1829. The plaintiffs were children of the testator, Gerard Willets, who, in 1815, entered into co-partnership with the defendant Blandford, and another person, (since deceased) for a term of twenty-one years, in the business of picture frame making. By the articles, the defendant was to be entitled to three-tenths, and the testator to seven-tenths, of the profits. It was provided, that in the event of the death of the testator, the defendant was to be at liberty to carry on the business for the remainder of the term, retaining a third of the testator's capital, and accounting for, or paying, a third of the profits to the family of the latter, executing articles of partnership, and giving his bond for the amount of capital which was allowed to remain. The will was proved by the executors; an appraisement of the stock in trade was made by them; the proportions of the capital were ascertained as between the defendant, the widow, (who was also executrix) and children. The whole capital was allowed to continue in the business, a third of the profits and 5l. per cent. interest on the remaining capital being paid to the testator's family.

Mr. *Sutton Sharpe*, and Mr. *Bickner* for the plaintiffs, submitted that the defendant was liable to account for, and pay, the profits of the business, in the same proportion as they were payable during the testator's lifetime. The Court would not allow a surviving partner, who also happened to be executor, to trade with his testator's capital.

Mr. *Temple* and Mr. *Bacon*, for the

defendant, argued that he was entitled to treat the capital, subsequently employed in the trade, as a loan out of the partnership funds. No loss whatever had been sustained by this mode of dealing with the capital. A settlement had been come to by the appraisement being made, and the Court ought to declare that it was sufficient, although there had been an omission to give the bond as directed by the articles.

The following cases were referred to:—*Wedderburn v. Wedderburn*, 2 Keen, 722; 4 M. and C., 41; *Cook v. Collingridge*, 1 Jacob, 607; *Crawshay v. Collins*, 15 Ves. 218; 2 Russell, 325; *Brown v. De Tauley*, 1 Jacob, 284; *Dimes v. Scott*, 4 Russell, 195; *Featherstonhaugh v. Fenwick*, 17 Ves. 298.

Wigram, V. C.—It seems to me that in this case I have no discretion, but that I am bound to apply the established rule of the Court, namely, that if a person takes upon himself to embark the property of his *cestuis que trust* in the risks of trade, he is bound to account for the profits made by that trade, if it has been carried on for his own benefit. The question, then, is, are there any and what circumstances which take Blandford's case out of the general course of proceeding, which is, that there shall be a sale of the property of the deceased partner at the time of his death, or as soon after as may be. It has been asked, if the testator chose to make his surviving partner his executor, how could he in that situation adjust his own rights and those of his *cestuis que trust* in a better manner than he has done? The obvious answer is, that if he chose to stand upon his rights as a continuing and surviving partner, he was not bound to join in taking out probate of the will. By becoming executor he placed himself under a positive incapacity to deal with the property for his own benefit. Having, however, placed himself in this situation, he might have brought the widow and children—the latter being infants, and the former concurring in all that he was doing—before the Court in an amicable suit, and have had the interests of himself and all parties set right. Cases of this kind are not to be judged of by the result, which may or may not be successful. The next question is one of more doubt and difficulty, namely, as to the proportion of profits which the defendant is to account for to the testator's family. In *Crawshay v. Collins*, 15 Vesey, Lord Eldon felt a doubt as to this. He kept the question open, directing an account to be taken of the capital employed in the concern at two periods of the business. The very fact of Lord Eldon's thinking an enquiry necessary as to the capital employed from time to time, was a decision by him that such amount, when ascertained, might be a material consideration in settling the proportion in which the profits should be divided and accounted for. No rule has been laid down in any of the cases, deciding that the surviving partner is liable in exactly the same proportions. What they are to be, is generally to be ascertained after an enquiry as to the circumstances of the part-

nership, the amount of the respective capitals, and many other particulars. I cannot say that there is any rule established which is alike applicable to all cases of this description. No one can read with attention the elaborate judgments of Lord Eldon in *Crawshay v. Collins*, and *Cook v. Collingridge*, without being satisfied that his mind saw the impossibility of subjecting cases so various as those of trading partnerships to any universal rule. Upon the whole, I am bound by authority to hold, that the nature of the trade,—the manner of carrying it on,—the capital employed,—the state of the account between the surviving and the deceased partner at the death of the latter, and the conduct of the parties at that time, may materially affect the rights of the parties, and I must therefore have more information than I now possess before I can safely and finally dispose of this case.

His Honour then directed that there should be enquiries and accounts taken, first, of the testator's estate as against his executors; secondly, of the dealings and transactions of the partnership since the last settlement in the lifetime of the deceased; thirdly, of the amount of capital belonging to each partner at the time of the death of Willets; fourthly, of the stock-in-trade, and the value of it, including the value of the good-will, which should be treated as part of the stock-in-trade; fifthly, of what was due to Willets at his death exclusive of his share of the capital and stock-in-trade; sixthly, of the amount of capital employed from time to time in the business since Willets' death, and by whom, and in what way such capital was supplied; seventhly, of the profits made in every year during the same time; eighthly, of all sums paid out of the business during the same time by either party, and on what account, computing the interest at 5l. per cent. on the sums so paid out, reserving the consideration of whether it would be proper to allow such interest; ninthly, an enquiry respecting the alterations alleged to have been made in the premises in which the business was carried on; and lastly, an enquiry with respect to the nature of the business, and how far it depended on the skill of the respective partners.

Willets v. Blandford, H. T. 1842.

Queen's Bench.

[Before the four Judges.]

MUNICIPAL CORPORATION.—COMPENSATION.

The Lords of the Treasury have no jurisdiction to decide on the claim of a dismissed officer of a corporation to remuneration under the Municipal Corporation Act, but can only decide as to the amount.

Where a claim is presented to a town council by which the right of the claimant to any compensation is denied, such total denial of a claim is an adjudication on the claim, and the claimant cannot after a lapse of six months treat such claim as admitted under 5 & 6 W. 4, c. 76, s. 66.

In this case a rule had been obtained

calling on the defendants to shew cause why a mandamus should not issue to them, commanding them to execute under their common seal, a bond to Mr. Mourilyan, conditioned for the payment of a sum of 7620*l.* as compensation for his loss of the office of town clerk of the borough. The applicant had claimed this sum from the borough, but the town council at first made no adjudication on the claim, and the Lords of the Treasury on appeal to them, ordered the payment of an annuity of 60*l.* to Mr. Mourilyan. He was not satisfied with the order, and applied to the Court under the 66 section of the 5 & 6 W. 4, c. 76. for an order for the payment of the original sum claimed, on the ground that the defendants had not, according to the provisions of that section, come to any decision on the claim within six calendar months after the same was presented, and therefore that it must be taken as admitted as therein provided.*

Mr. Kelly and Mr. Watson in Mich. term, 1841, shewed cause against the rule, which was supported by the *Solicitor General* and Mr. *Whitehurst*.

Lord Denman, C. J., now delivered the judgment of the Court. "This was an application for a mandamus to be directed to the defendants to execute a bond, granting to one John Mourilyan, compensation for the loss of his offices in the corporation. It appeared that he had filled the office of town clerk, and had been removed from that office by the new corporation. He sent a claim for compensation in September, 1836, and he now claimed, that the full amount of compensation he thus demanded, should be allowed, on the ground that the claim must be taken as admitted, the town council not having adjudicated on it within six calendar months from the time it was presented. This was denied on the other side, and that raised the most material point for our decision. When the claim was sent in, a copy of it was prepared for the members of the town council, and a council was summoned in order to consider and determine on the claim. Mr. Mourilyan was not called on for any explanation of his claim, but the meeting took place, and in the result, the town council passed a resolution altogether disallowing any claim for compensation, reserving, however, the full right, in case the decision should be overruled, to investigate the statements on which the claim was founded. Soon after the resolution had been passed, it was communicated to the applicant, and he did not make it the subject of an appeal to the Lords of the Treasury until the 12th of March. After considering the matter, the Lords of the Treasury came to the conclusion that the applicant was entitled to compensation, and they settled the

amount at 60*l.* a year, and directed a bond to be prepared for that sum. The town council was ready to fulfil this award, but the applicant expressed himself dissatisfied with it, and now asked for the full amount of what he had claimed, which he contended must be taken as admitted, inasmuch as a total rejection of any claim, was not an adjudication on a claim within the meaning of the act. This rule cannot be absolute in form, if the town council has determined that the claim to compensation is not admissible, for such a determination cannot be treated as an admission of the claim, nor can the rule be moulded differently if the Lords of the Treasury have rightly decided the matter brought before them. Both these points have been argued, and we are of opinion that it must be considered that the town council did determine on the matter of the claim in September, 1836. That decision embraced the questions of right and of amount, and whatever may be thought of the extent of the jurisdiction of the Lords of the Treasury, it is clear that the town council had a right to consider and determine both these questions. The question of amount must in one form or the decision of the question of right be involved in that decision, and the town council decided that the applicant asked for that to which he was not entitled. The application is in the first instance to be made to the town council; but it is unreasonable to assert that if that body denies the right of the applicant to have anything in the way of compensation, it determines nothing in respect of his claim, and that the claim is afterwards, by the operation of time to be considered as admitted, or on the other hand, that if the council denies the right, the Lords of the Treasury are still to be called on to determine the amount, so that if the council should turn out to be wrong as to the right of claiming compensation, it should be considered that in point of form the decision had been the other way. We do not so read the statute. The language of the section shews that the claim must come before the council in the first instance. If the council is in favour of the right, it must settle the amount, and in that case the neglect to consider the amount would bring the matter within the provisions of the section; but the refusal to recognize the right disposes at once of the whole. The *Solicitor General* was under these circumstances, driven to contend that the town council had no right to decide, except on the amount. But there is no foundation whatever for that argument, and on that ground, therefore, the rule cannot be absolute in the terms prayed. The next question we have to consider is whether the Lords of the Treasury had any jurisdiction to decide on the question of right. In the cases of *Warwick*^b and *Newbury*,^c we held that they were not entitled to that jurisdiction; that their jurisdiction only extended to the question of amount, and that the parties could not by the mere fact of such a decision by the Lords of

* By which it is declared, "that if the council shall not determine on such claim within six months after the aforesaid statement shall be delivered to the town clerk or treasurer, as the case may be, such claim shall be considered as admitted."

the Treasury, be prevented from afterwards bringing that question of right before the Court. We think that the same limits exist as to the power of the Lords of the Treasury in both parts of the section. As we are of opinion that the Lords of the Treasury have not this power to determine the question of right, we think that the writ may go to the town council, to command generally that compensation may be made to the applicant, and to that command a return must be made, bringing the question of right before us; or if the town council should declare a readiness to agree to secure the sum awarded by the Lords of the Treasury, the applicant may, if he should be so advised, apply to the Lords of the Treasury to re-consider the question of amount. The rule will, therefore, be absolute in the manner now stated.

Rule absolute accordingly.—*The Queen v. The Mayor and Corporation of Sandwich*, H. T. 1842. Q. B. F. J.

Queen's Bench Practice Court.

JUDGE'S ORDER.—COSTS.

A judge's order was obtained to set aside a regular judgment of non pros on payment of costs: Held, that by the term "costs" in such a case, the costs of the judgment and of the application to set it aside are meant.

Where in such a case, the judgment having been signed by the defendant, the attorney of the defendant refused to attend a peremptory appointment to tax such costs, it was held that the master might tax them at the nominal sum of 3s. 4d., on tender of which the plaintiff might treat the judgment as being set aside.

Knowles had obtained a rule for setting aside the issue, notice of trial, and verdict in this case. It was an action on a bill of exchange, and the defendant having pleaded, the plaintiff omitted to reply in proper time, and a judgment of *non pros* was, in consequence, signed by the defendant. Upon the application of the plaintiff to *Wightman*, J., at chambers, an order was made to set aside the judgment on payment of costs; and the order having been drawn up, the defendant was served with an appointment to tax his costs. When before the Master, the defendant claimed the whole costs of the cause, to which he contended he was entitled under the Judge's order, but the Master refused to tax to him more than the costs of signing judgment, of the application to set it aside, and of striking it out of the book. To this the defendant refused to assent, but upon application to the learned Judge he declared that his intention coincided with the view taken by the Master. A peremptory appointment to tax was therefore served upon the defendant's attorney, which he refused to attend, and the Master taxed his costs in his absence, at the nominal sum of 3s. 4d. This sum was tendered to him, but he refused to accept it, and the plaintiff's attorney subse-

quently replied, delivered the issue, and tried the cause as being an undefended cause.

Hoggins now shewed cause, and urged that the defendant had acted erroneously throughout the whole transaction, and the plaintiff had only adopted such a course as his interests demanded.

Knowles, contra.—The judgment of *non pros* had not in fact been struck out of the book, and the plaintiff had gone too far in delivering the issue, and proceeding to trial.

Williams, J.—This is a strict point of practice; the Judge's order meant to include merely the costs of the judgment, and those consequent on setting it aside, and the defendant was only entitled to them. The question is, whether the order of my brother *Wightman* was complied with in giving the peremptory notice of taxation, and tendering the costs which the Master allowed the defendant in his absence? It seems to me that what was done was sufficient. I consider that the order of the Judge did in fact set aside the judgment, and that the act of striking it out would be properly the act of the defendant's attorney, for which he would be allowed costs. I think, therefore, that the Judge's order was complied with by the plaintiff, and that his subsequent proceedings were regular.

Rule discharged, with costs.—*Christie v. Thomson*, H. T. 1842. Q. B. P. C.

CHANCERY SITTINGS,

In and after Easter Term, 1842.

Before the Master of the Rolls.

AT WESTMINSTER.

Friday . . . April 15	Motions.
Saturday 16	Petitions in Gen. Paper.
Monday 18	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Tuesday 19	
Wednesday 20	Exceptions.
Thursday 21	Motions.
Friday 22	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday 23	
Monday 25	
Tuesday 26	
Wednesday 27	Motions.
Thursday 28	
Friday 29	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday 30	
Monday . . . May 2	
Tuesday 3	
Wednesday 4	Motions.
Thursday 5	
Friday 6	Pleas, Demurrers, Causes, Further Directions, and Exceptions.
Saturday 7	Petitions in Gen. Paper.
Monday 9	Motions.

AT THE ROLLS.

Tuesday 10	Short Causes after swearing in the Solicitors.
Short Causes, Consent Causes, and Consent Petitions, every Tuesday at the Sitting of the Court.	

BILLS IN PARLIAMENT RELATING TO THE LAW.

Royal Assents.

23d March, 1842.

Loan Societies.
Apprentices Regulation.

House of Lords.

BILLS IN PROGRESS.

For the better administration of Justice in the execution of Commissions of Lunacy.

[For 2d reading.] The Lord Chancellor.

For the amendment of the Law of Bankruptcy.

[For 2d reading.] The Lord Chancellor.

To define the Jurisdiction of General and Quarter Sessions.

[For 2d reading.] The Lord Chancellor.

For the Amendment of the Law relating to Bankrupts, and the better Advancement of Justice in certain Matters relating to Creditors and Debtors.

Lord Cottenham.

[For 2d reading.]

To improve the Practice and extend the Jurisdiction of County Courts.

[For 2d reading.] Lord Cottenham.

To enable the Lord Chancellor to direct certain Proceedings in Bankruptcy, Insolvency, and Lunacy to be carried to the County Courts.

Lord Cottenham.

[For 2d reading.]

For establishing Local Courts.

[For 2d reading.] Lord Brougham.

For transferring Appeals from the Privy Council to the House of Lords.

[For 2d reading.] Lord Campbell.

For making better provision for hearing Appeals in the House of Lords.

[For 2d reading.] Lord Campbell.

For the better Administration of Justice in the Court of Chancery.

[For 2d reading.] Lord Campbell.

To enable Baptists to make affirmations, instead of oaths.

Lord Denman.

[For 2d reading.]

For improving the Law of Evidence.

[In Committee.] Lord Denman.

For enabling Ecclesiastical Corporations to grant Leases.

The Bishop of London.

[In Committee.]

For enabling Incumbents of Benefices to grant Leases.

The Bishop of London.

[In Committee.]

To limit the Criminal Jurisdiction of Quarter Sessions.

Lord Godolphin.

[For 2d reading.]

To consolidate the Queen's Bench, Fleet, and Marshalsea Prisons.

[For 2d reading.]

House of Commons.

NOTICES OF BILLS.

To allow Writs of Error on Mandamus.

The Attorney General.

To alter the Law as to Double Costs, and other matters,

The Attorney General.

For the more effectual inspection of Houses, licensed at Quarter Sessions for the Insane.

Lord G. Somerset.

Turnpike Roads Continuance.

BILLS IN PROGRESS.

To regulate the Sale of Parish Property.

[For 2d reading.] Sir E. Kuatshbull.

To alter the Law for the admission of Barristers in Ireland.

[For 2d reading.]

To amend the Law of Copyright.

[In Committee.]

Lord Mahon.

The comparatively favourable progress made in the committee on this bill, shall be noticed next week.

For Registering Copyrights and Assignments, and better securing the property therein.

[In Committee.]

Mr. Godson.

For the Regulation of Buildings.

[In Committee.]

Mr. F. Maule.

For the Improvement of certain Boroughs.

[In Committee.]

Mr. F. Maule.

Municipal Corporations. [In Committee.]

To indemnify Clerks to Attorneys, and others in certain cases.

[In Committee.]

Forged Exchequer Bills.

[Passed]

Small Debt Courts Bills for

Barnsley,

Leicester, (jurisdiction 15/)

Honiton.

Kingswinford,

Liverpool.

THE EDITOR'S LETTER BOX.

A correspondent states that a dishonorable practice prevails at the examination of infringing the rule which requires that "*no candidate shall copy from another.*" He says, the disgrace and fear of failing to pass the examination (a circumstance which renders the candidate notorious in the district he may reside in) overcomes the appeal of the master and the rule which prohibits his copying. We thought that effectual means were taken to prevent such a practice; and if it occur next term, no doubt it will be detected. The number will be comparatively small on the 3d May.

An attorney practising beyond ten miles from the Royal Exchange may be admitted as a Notary Public, obtaining his faculty at Doctor's Commons. See 3 & 4 W. 4, c. 70; 6 L. O. 422. The nature, duties, and practice of a notary are stated in Mr. Brooke's book.

The service of "Mox," from 1831 to 1834, will be deemed good, if he can prove it by sufficient secondary evidence, the attorney being abroad. The Court, on an affidavit of the facts, would no doubt authorize a new contract to another attorney, for the residue of the five years, without the concurrence of the first attorney; or, as the original term has expired, a further contract might be made without applying to the Court; but such application would be the safer course.

The communications of T. W. B.; and R. W. S., shall appear in an early number.

The Legal Observer.

SATURDAY, APRIL 16, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE LAW OF JOINT-STOCK COMPANIES.

THE FORFEITURE OF SHARES.

THE forfeiture of shares is a right which is usually reserved to the directors in the formation of a joint-stock company, whether by act of parliament or deed of settlement. It is a very important one, and may be often resorted to with advantage. The forfeiture is usually made to take place either on failure to sign the deed of settlement, or on the nonpayment of calls. The latter is the more usual event on which this right of forfeiture is acted on. One of the peculiarities of this species of partnership is the frequency with which its members are changed, and the more this can be facilitated, the more easily can the affairs of the company be carried on. A person frequently takes shares, and pays one or two calls, but from various reasons he pays no more. He, perhaps, speculated for the rise, and cannot readily make any further payment; he gets alarmed as to his responsibility, and is unwilling to incur further risk; he cannot readily dispose of his shares, and hence the question of forfeiture arises. The clause of forfeiture on nonpayment of calls is usually drawn in two ways. The first, and perhaps the more usual mode of framing it is to provide that on default in payment of any call, the share shall be forfeited by an extraordinary board of directors specially called for that purpose, and by an extraordinary general meeting called for that purpose. The other, and the better mode of drawing the clause, is to provide that on nonpayment of a call the share shall be forfeited, subject to be restored by the di-

rectors, on a special application being made for that purpose. In either case, the clause usually goes on to provide that when a share is forfeited, the holder shall lose all his interest in the company, and a subsequent clause in general gives the directors power either to sell such forfeited shares, or to cancel them for the benefit of the company. When a forfeiture takes place regularly in this way, under the provisions of the deed of settlement, and more especially as in the ordinary case, if express notice is given to the holder of the clauses, and of the intention of the directors to act on them, we apprehend that there can be no doubt that the holder is absolutely divested of all his interest in the company. It is necessary, in the opinion of the directors for carrying on the company, that the call should be made, and if the money be not paid by the holder, an opportunity should be given them to raise it elsewhere. On the other hand, the shareholder is often desirous of having his shares forfeited, thinking, in this way, to escape further payment, or to avoid responsibility, and having done so, he cannot afterwards turn round and put in for his share of the profit, if the concern succeeds. This we apprehend to be quite clear, when clauses of the nature we have alluded to are inserted in the deed of settlement; but if there are no such clauses, the case may be different.

In a late case, * the circumstances were these—In February, 1825, a joint-stock company was established, for the purpose of working a mine, the capital of which was to consist of 200 shares of

* *Prendergast v. Turton*, 1 Yo. & Col. N. C. 98.

50*l.* each. The directors had the power to exact the full payment of 50*l.* on each share, but if further aid were required, then they were to call a meeting of the proprietors, and submit to their decision the propriety of increasing the number of shares, or of taking such other steps as might appear advisable. The plaintiffs, who were shareholders, paid the full amount of their calls, but in October, 1826, were informed, by the secretary of the company, that he had some time since mentioned to a person (who was the plaintiff's agent for payment of their calls) that in the previous July, the directors had resolved to increase the amount of calls on each share. To this the plaintiffs objected, and they refused to pay the additional calls. After some altercation, the plaintiffs left the country, and in July, 1828, the shares were declared forfeited. The other shareholders then continued to work the mine, but the concern was unsuccessful till the year 1835, when it began to make an increasing profit. In November, 1837, the plaintiffs, as they alleged by their bill, returned to this country. In September, 1838, they filed their bills to be let into the account of the profits with the other shareholders. Sir K. Bruce, V. C. said, "whether the course which the directors thought proper to take as to the forfeiture of the shares was such as ought to have been pursued, and whether their proceedings could not have been set aside, if steps had been taken in time for that purpose, it is not necessary to decide. The point which has struck me is the time at which the suit has been instituted having regard to the peculiar nature of the property and the circumstances of the case. This is a mineral property—a property, therefore, of a mercantile nature, exposed to hazard, fluctuations, and contingencies of various kinds; requiring a larger outlay, and producing, perhaps, a considerable amount of profit in one year, and losing it the next. It requires the parties, therefore, to be vigilant and active in asserting their rights. I was anxious to have the chasm between the years 1828 and 1837 in some manner filled up,—to have the conduct of the plaintiffs during that time, in some manner explained. But I am unable to find the means of doing this. Here is a mineral property, the subject of great uncertainty and fluctuation. After its character has been established with much difficulty; after a period of nine years, during which they rendered no assistance to the concern, a claim is brought forward by

those who are now willing to share in its prosperity. It appears to me, that although this is a case to be decided in Equity, and at the hearing, and not on any interlocutory motion; it is impossible to say that the plaintiffs can be assisted. There is no evidence of their recent discovery of their rights." The bill was accordingly dismissed, but without costs, his honour intimating it as his opinion that it was not an unfit case to be submitted to the Lord Chancellor.

Another point bearing on the same subject has been recently decided by the same learned Judge. By one of the clauses in a deed of settlement, on the formation of a joint stock banking company, it was provided, "that all debts due to the company by or on the part of any proprietor in respect of cash advances, or otherwise, should at all times, and in all cases, be the first and paramount lien on all the shares and stock of such proprietor, and the directors were empowered to cancel, extinguish, and declare forfeited, or to sell and dispose of such shares, either wholly or in part, as the case might require, by way of or towards satisfaction or liquidation of such debts, and that every such person should henceforth cease to be a proprietor of the company, or to retain any interest therein in respect of the shares so cancelled, extinguished, and declared to be forfeited, or so to be disposed of as aforesaid." A holder of 1000 shares being indebted to the bank for cash advances, a notice, dated 30th May, 1837, was given to the shareholder, that unless he redeemed the 1000 shares by payment of the balance of his account with the bank, on or before the 13th day of June, the directors would on that day proceed, under the clause of the deed of settlement, to cancel, extinguish, and declare his shares forfeited, and to place the value of the shares, on that day, to the credit of his account with the bank. The balance not being paid, the directors, by a resolution, declared the shares to be cancelled and forfeited; and it appearing to them that the value of the shares on that day was 10,000*l.* it was resolved that credit should be given to the proprietor for that amount in his account. A bill having been filed to set aside the cancellation, it appeared that the market price of shares on the 13th of June, slightly exceeded the price allowed by the directors, but the evidence proved that if the 1000 shares had been carried into the market, the price would have been reduced greatly below the amount allowed by the directors. It was held that the directors,

placing themselves by the cancellation in the situation both of vendors and purchasers, were bound to allow the highest market price, which could be obtained for the shares without speculating on what might be the effect of throwing the 1000 shares into the market, and the cancellation was declared void, and was set aside.*

JOINT STOCK BANKS.

WE have already stated the law relating to joint stock banks. See 21 L. O. 129, 273, 372; 22 L. O. 18, 308. In these references, our readers will find all the cases relating to these institutions, which are daily becoming more important. They chiefly relate to actions and suits by and against joint stock banks, and we now add the following on the same subject.

A joint stock bank may sue under 7 G. 4, c. 46, by their public officer, members of the company, jointly with strangers. This has been decided by Sir L. Shadwell, V. C., *Manner v. Rowley*, 10 Sim. 471. His Honour came to this conclusion after a careful examination, both of the statute 7 Geo. 4, c. 46, and 1 & 2 Vict. c. 96.

LORD CAMPBELL'S BILLS.

Lord Campbell's bills to which we have already fully adverted, (see *ante*, p. 369.) were withdrawn on Monday last, for the present session. This is, probably, no disappointment to the noble lord with whom they originated: he could hardly have hoped to have carried them in the present session. Still, we have no hesitation in saying that no one argument, entitled to consideration, was adduced against them. That there should be one supreme appellate court for the whole country, and that this court should be the House of Lords, with power to obtain assistance from any quarter that may be necessary, we conceive to be clear; and that, moreover, this will, at no remote time, become the law of the land, we entertain no doubt. At the same time, it may be well to wait until the recent alterations in the Court of Chancery have been a little longer established—until the business is a little more settled; and, until, consequently, the demands for a permanent Judge in the Court of Chancery can be enforced by a larger arrear of appeals to the Lord Chancellor, than exists at present. Lord Campbell stated, that the number

was now considerably larger than in the time of Lord Cottenham; and there can be no doubt, that as the appeals to the Court of Chancery are now from four Courts instead of two, the number of appeals must increase, even if there were the same power of subduing them in the Lord Chancellor; which can hardly be supposed. We have little doubt, therefore, that we shall see the scheme of Lord Campbell adopted at a future time.

PRACTICAL POINTS OF GENERAL INTEREST.

LIFE INSURANCE.

WE have, from time to time, given the cases relating to concealments on effecting policies of insurance, (See 12 L. O. 89, and 16 L. O. 522)—a subject of considerable importance to the profession. In a late case it was contended, by the defendant's counsel, that the party whose life was insured was the general agent of the assured, and that the latter was responsible for all the acts of such party connected with the insurance; but Lord Denman, C. J., laid down the rule to be, that the assured "is to answer all questions put to him, and if he answers them falsely, that will vitiate the policy. Or, even if, without being distinctly interrogated as to his habits, the jury thought that he was aware of them, and, knowing their importance, studiously concealed them from the insurers; in that case, his lordship advised them to find the issue on the sixth plea for the defendant. But the mere non-communication of his habits of life, by the party whose life was insured, would not in itself vitiate the insurance, even though those habits were in the opinion of the jury, such as tended to shorten life." *Ravlin v. Desborough*, 1 Moo. & Rob. 329. We subjoin an extract from the note of the reporter in this case, which is worthy of attention.

"In most cases it is required that the persons intending to effect an insurance, shall previously sign a declaration, containing answers to specific questions as to the age and health, &c. of the party, whose life is intended to be insured; and amongst the questions, he is required 'to give the names and residences of two gentlemen to be referred to, respecting the present and general health of the life to be insured, one to be the usual medical attendant of the party.' And in the policy, and frequently in the declaration itself so signed, it is provided 'that a declaration as to all the above points is to be considered as the basis of the contract; and that if such declaration be not in all respects true, the policy will become void.' Such was the form of the instruments in the principal case. (See the form in *Everett v. Desborough*, 5 Bing. 503.) What then is the extent of this warranty? It is clear that in its terms it reaches only the

* *Stubbs v. Lister*, 1 Yo. & Col. N. C. 81.

declaration made by the party proposing the insurance. If anything which he represents to the company be untrue, he is to forfeit the benefit of the policy. If, therefore, he refers the company for information respecting his health to persons who are not able to give such information: or if he represents one of the referees to be his usual medical attendant, when, in fact, he is not: in either of these cases the declaration made by the assured is untrue, and the policy therefore void. (*Everett v. Desborough*, and *Huckman v. Fernie*, 3 M. & W. 505.) But there would seem to be nothing in the language of the policy making the assured responsible for the conduct of his referees. Is there, then, anything in the nature of the contract itself, or in the relation in which the parties stand towards each other, which should carry the responsibility of the assured for the conduct of his referees, farther than the words of the contract seem to extend? It is submitted there is not. It is sometimes, indeed, contended that the referees are the agents of the assured, and that he is on that ground liable for the consequences of their falsehood or negligence; but this appears a very forced construction. It might as well be contended, that when a servant, applying to be hired, is asked for the name of his former employer, and gives it truly, such former employer is to be considered the agent of the servant. It seems a more natural and just conclusion to hold that, in both instances, the referee is a middle-man, the agent of neither party; but himself liable for the consequences of any falsehood of which he may be guilty. The only reported case which appears, at first sight, inconsistent with this view of the law, and to make the assured liable for the misrepresentations or concealments of his referees, is that of *Lindeman v. Desborough*, 8 B. & C. 586. The policy was there in the same form as in the principal case, and no communication having been made, either by the assured or by his referees, of a fact (proved on the trial to be material) respecting the health of the life insured, the policy was holden to be on that ground void: and if the fact concealed had not been known to the assured, but only to the referees, the question must have arisen, whether the assured be responsible for the concealment of facts by the referees. But it does not appear from the report in what relation the plaintiff himself stood towards the life insured, or what knowledge he had of the fact not communicated; and it seems to have been assumed that he did not know the fact, for Lord Tenterden C. J. says, he should have directed the jury to find for the defendant, if they thought the plaintiff had failed to communicate to the insurers any material circumstances within his knowledge. It is conceived, therefore, that this case does not at all go the length of establishing that (in the absence of any express condition to that effect) the policy can be avoided by reason of the referees not communicating a material fact, that fact not being within the knowledge of the assured."

NEW BILLS IN PARLIAMENT.

JURISDICTION OF JUSTICES.

The following bill has been introduced by the Lord Chancellor, intituled

"An Act to define the Jurisdiction of Justices in General and Quarter Sessions of the Peace."

1. *Justices in Sessions restrained from trying certain offences.*—Whereas it is expedient that the powers of justices in general and quarter sessions of the peace, with respect to the trial of offences, be better defined: be it enacted by the Queen's most excellent Majesty, by and with the advice and consent of the Lords spiritual and temporal, and Commons, in this present parliament assembled, and by the authority of the same, That after the passing of this act neither the justices of the peace acting in and for any county, riding, division or liberty, nor the recorder of any borough, shall, at any session of the peace, or at any adjournment thereof, try any person or persons for any treason, murder, or capital felony, or for any felony which, when committed by a person not previously convicted of felony, is punishable by transportation beyond the seas for life, or for any of the following offences; (that is to say,)

1. Misprision of treason.
2. Offences against the Queen's title, prerogative, person, or government, or against either house of parliament.
3. Offences subject to the penalties of præmunire.
4. Blasphemy and offences against religion.
5. Administering or taking unlawful oaths.
6. Perjury and subornation of perjury.
7. Making a false oath or affirmation, so as to be liable to the punishment of perjury.
8. Forgery.
9. Unlawfully and maliciously setting fire to crops of corn, grain, or pulse, or to any part of a wood, coppice, or plantation of trees, or to any heath, gorse, furze, or fern.
10. Bigamy, and offences against the laws relating to marriage.
11. Abduction of women and girls.
12. Endeavouring to conceal the birth of a child.
13. Offences against any provision of the laws relating to bankrupts and insolvents.
14. Composing, printing, or publishing blasphemous, seditious, or defamatory libels.
15. Bribery.
16. Unlawful combinations and conspiracies, except conspiracies or combinations to commit any offence which such justices or recorder respectively have or has jurisdiction to try when committed by one person.

Provided always, that nothing herein contained shall be construed to give authority to the justices of the peace acting in and for the cities of London and Westminster, the liberty of the Tower of London, the borough of Southwark, and the counties of Middlesex, Essex, Kent, and Surrey, to try any person or per-

sons for any offence committed or alleged to be committed within the jurisdiction of the Central Criminal Court, which such justices are restrained from trying under the provisions of an act passed in the fifth year of the reign of his late Majesty, intituled an Act for establishing a new Court for the trial of offences committed in the Metropolis and parts adjoining.

2. *Indictments found at the sessions of the peace to be removed.*—And be it enacted, That it shall be lawful for any judge of one of her Majesty's superior courts at Westminster, acting under any commission of oyer and terminer and gaol delivery for any county, to issue, if he shall think fit, any writ or writs of certiorari or other process, directed to the justices of the peace acting in and for such county, riding, division, or liberty, or to the recorder of any borough situated within the said county, commanding the said justices and recorder severally to certify and return into the court holden under the authority of such commission of oyer and terminer and gaol delivery all indictments or presentments found or taken before any of the said justices of the peace or recorder, of any offences which after the passing of this act such justices or recorder will not have jurisdiction to try, and the several recognizances, examinations, and depositions relative to such indictments and presentments; and also, if necessary, by writ or writs of habeas corpus, to cause any person or persons who may be in the custody of any gaol or prison, charged with any such offence, to be removed into the custody of the keeper of the common gaol of the county, so that the same offences may be dealt with, tried, and determined according to law, under the authority of the said commission.

3. *Recognizances to be obligatory to appear at assizes.*—And be it enacted, That every recognizance which shall have been entered into for the prosecution of any person at any court of sessions of the peace, for any offence which after the passing of this act such court will not have jurisdiction to try, and every recognizance for the appearance, as well of any witness to give evidence upon any bill of indictment or presentment for any such offence, as of any person to answer our Lady the Queen for or concerning any such offence, or to answer generally before such court, shall, in case any writ of certiorari or habeas corpus be issued for the purpose of removing such indictment or presentment, or such person so in custody as aforesaid, be obligatory on the parties bound by such recognizance to prosecute and appear and give evidence and do all other things therein mentioned, with reference to the indictment or presentment or person so removed as aforesaid, before the justices of oyer and terminer and gaol delivery acting in and for that county, in like manner as if such recognizance had been originally entered into for prosecuting such offence, appearing, or giving evidence, or doing such other things before the said justices of oyer and terminer and gaol delivery: Provided always, that one

week's notice shall have been given, either personally, or by leaving the same at the place of residence as of which the parties bound by such recognizance are therein described, to appear before the court of oyer and terminer and gaol delivery, instead of the said court of sessions of the peace: Provided also, that the judge who shall grant such writ of certiorari or habeas corpus shall cause the party applying for such writ or writs, whether he be the prosecutor or party charged with such offence, to enter into a recognizance, in such sum, and with or without sureties, as the judge may direct, conditioned to give such notice as aforesaid to the parties bound by such recognizance to appear before the said court of oyer and terminer and gaol delivery, instead of before the said court of sessions of the peace respectively, and to do such other things with reference to the indictment, presentment, or person removed, as such court or judge shall direct.

4. That this act may be amended or repealed by any act to be passed in this session of parliament.

LOCAL COURTS.—TRIALS BEFORE UNDER-SHERIFFS.

THE bill which, some time ago, it was reported that the Lord Chancellor intended to bring in, relating to the trial of petty actions, has not yet made its appearance. It may be expedient, therefore, to consider the extent of business which any new Judges would have to transact. If it be intended to substitute Local Courts for the Under-sheriffs of the several counties, the number of causes will, by no means, justify the measure.

From information we have received, on which we can fully rely, it appears that in actions brought for sums not exceeding 20*l.*, there are *not two cases in one hundred* which proceed so far as the writ of trial. Three-fourths are settled upon the mere issuing of the writ, and others at the next stage; so that the judicial business relating to actions under 20*l.* is exceedingly small.

The expense of new courts for the purpose of trying actions of this kind, including the salaries of Judges, Registrars, and other officers, would be enormous. The fees already paid on writs of trial are quite sufficient, and instead of being increased ought to be diminished. How, then, are the expenses to be defrayed?

Perhaps it is contemplated to abolish the various County Courts, Courts of Request, the Borough and Hundred Courts, and to consolidate them all in one general Court in each district. In order to judge of the ef-

fect of carrying out this supposition, it may be useful to state that there are

47 County Courts;

84 Courts of Request;*

149 { Borough, Manor, and Hundred
Courts, &c.

280

120 { Courts in which no business has
been transacted for several years.

400

These Courts might be consolidated; but then, how are the Judges and officers to be compensated? Besides, the suits in these petty Courts are for trifling amounts, generally under 40*s.*, although the jurisdiction of many of the Courts extend to 5*l.*, and some to more. In these cases, no attorney appears. The matter in dispute is merely *when* the debt shall be paid, not *what* is the amount. It can scarcely be intended to transfer these cases to the same Judge who is to decide questions of law, and with the aid of a jury to try questions of fact, in actions for 20*l.*

We have no doubt, however, that the Lord Chancellor will make himself acquainted with the whole case before he proposes any sweeping change in the existing Courts.

THE CERTIFICATE DUTY AND INCOME TAX.

It will be observed by the proceedings in Parliament that the attorneys and solicitors have been aroused to some symptoms of resistance regarding the certificate duty. The impost has been so long submitted to, (subject to occasional grumbings, but without any combined effort to remove it) that nothing short of a *new tax* would have produced any effect. Individual members of the profession have always been loud in their condemnation of its injustice, but the subject of it has never, until now, been taken up by the body collectively. They see at length the effect of their supineness. The wealthier part may be still reluctant to put forward their strength, but we conceive that it is clearly the duty of the leading and influential members to use their best endeavours to throw off the unequal burthens which press on the practitioners in general. It is not because some of the over-grown firms feel the certificate duty or the income tax as a small item—an insensible quantity—in their annual expen-

diture, that the great bulk of the practitioners are still to be improperly burthened. We are for the profession at large, in all its branches, and shall keep alive the objection until the grievance be redressed.

The more we consider the supposition that the certificate tax is beneficial to the practitioners by excluding disreputable persons, the more we are convinced that the notion is fallacious. The tax, we are satisfied, not only offers no real check, but leads to great evils. Attorneys who cannot afford to pay the duty, practise in the name of others, contrary to express enactments; or, by unfair practice, or exorbitant charges, raise the means of taking out their certificates.

We say nothing to the barrier at the threshold by which 120*l.* is exacted, whether the youth lives to be admitted, or dies previously, or resorts to a more profitable calling; nor to the admission duty, (howbeit, we think both of these exactions unjust.) Let these be submitted to by way of concession to those who think that the "respectability" of the profession is to be maintained, not by the intellectual attainments of its members, but by the possession of a few hundred pounds.

We merely for the present contend, that when a man has paid large preliminary taxes, and served his time according to the ancient law, he should not be called upon to pay a poll-tax for permission to pursue his lawful calling—a tax not inflicted on any one else. In France, we understand, the members of *all* the professions have a patent, and every trade has a licence; and that a large revenue arises from this source. We have no doubt that the lawyers would willingly contribute to the state a personal tax, if it were levied, as well on other professional men, as on trades and callings in general. If the certificate tax be continued, it must be extended to others; and we think that much public advantage may arise by having every person, of whatever business or profession, duly registered, and all others prohibited from acting therein. The finance minister should look to this, and whilst he removes a manifest grievance, he may raise a larger income, and materially benefit the public security against fraud and imposture.

We extract the following statements from the Petitions of the Society of Solicitors in the Supreme Courts of Scotland, and the Attorneys and Solicitors of Sunderland:—

The Solicitors of Scotland state—

"That your petitioners, and others, who act

* This number must be much greater. Ed.

as agents or solicitors before the Supreme Courts of Law in Scotland, are not only liable in common with their fellow-subjects to the indirect taxes upon articles of consumption, but also to one tax, to which in so far as they are aware, there is nothing analogous, applicable to individuals belonging to any of the other learned professions.

"That by an act passed in the 55th year of the reign of his Majesty King George the Third, cap 184, a duty of 12*l.* sterling per annum was imposed upon every solicitor, notary, or agent, residing within the city of Edinburgh, who has been admitted for three years or upwards, and 6*l.* per annum on each of such persons as shall not have been admitted for more than three years.

"That your petitioners know that it is the wish of your honorable house in imposing taxes of any kind, but particularly direct taxes, to adopt a principle, just and equitable in itself, which shall equally affect all classes of the community according to their ability, and that no particular class of individuals ought to be the object of personal taxation; but the duty payable by your petitioners, and others, acting as attorneys or solicitors, is a direct tax upon them, for permission to seek a livelihood in the practice of a particular department of the law.

"That, although your petitioners do not express any opinion upon the general policy of an income tax, yet they do humbly submit that attorneys and solicitors who pay for annual certificates, as before mentioned, should not likewise be subjected to any impost on their income, which would in effect make them liable to a tax of *double* the amount, payable by individuals in other professions."

The Sunderland Petition states—

"That your petitioners have long felt it a serious grievance to be taxed a sum annually for their certificate of practice, from which other professions are exempt. The profession in London being charged the annual sum of 12*l.*, and in the country 8*l.*, which, in the one case, is equal to 3*l.* per cent. on an income of 400*l.*, and in the other, nearly equal to that amount on 300*l.* per annum.

"That your petitioners also individually paid a stamp duty of 120*l.* on being articulated, and fees on being admitted to practice to the amount of 50*l.*, making together 170*l.*, which, at the rate of 5*l.* per cent. interest, is equal to a further tax of 8*l.* 10*s.* per annum on a capital sunk.

"That should the bill which is about to be brought into your Honorable House, on the resolutions now pending, for imposing a tax of 3*l.* per cent. on income, pass into a law, your petitioners will be made to contribute an additional 3*l.* per cent., which, with the tax they at present pay, and the interest on the sunk capital before-mentioned, will subject them to the payment of nearly 10*l.* per cent. on all incomes of 200*l.* per annum, being above treble the amount intended to be levied by the bill on other parties.

"That your petitioners are content to submit to a fair and equal share of the burthens of the state; but they beg respectfully to protest against being made to contribute a greater proportion than the rest of her Majesty's subjects, which they cannot but consider as most unreasonable and unjust."

The following letter, shewing the injustice of the heavy certificate tax on one branch of the law as a profession, compared with the small amount paid by a few traders for licences, is worthy of attention. The points are well argued.

Compare the certificate duty with the tax in the shape of a licence on all alehouse keepers. In a country, and trade of free competition, as we may suppose England, and the ale trade to be, the alehouse keeper, beyond a fair return for his capital, only gets a living, a daily bread; tax him with a licence, and the consequence will be, that he must either leave the trade, or charge an increased price for his beer; for he must still have his daily bread. Tax upon him, therefore, will finally fall on the consumer. The attorney, owing partly to competition, and partly to a limit of fees, gets only—beyond a fair return for his capital—a moderate living. He is taxed by a certificate, but he has no alternative, no way, like the alehouse keeper, to shift the tax from his own shoulders on those of his clients. The limit of fees puts an end to this way of releasing himself; for the scale of fees does not increase in proportion to the amount of taxes. The certificate on attorneys is, therefore, unlike the licence on alehouse keepers, and many other traders. The former being paid out of the daily bread of the attorney, the latter being paid indirectly by the consumer.

The certificate duty is unequal as between the members of the legal profession; for if two attorneys in actual practice have been admitted an equal number of years, although the one may have an income of 1000*l.* a-year, the other only 150*l.*, still they pay a similar amount of tax. The proposers of this impost supposed that all practising attorneys for the first three years after *admission* would possess incomes pretty equal, and tax them accordingly; they supposed also, that at the end of three years from *admission*, and ever after, *all* attorneys' incomes were not only equal, but, about the third year from *admission*, increased in such a ratio as to warrant a doubling of certificate duty, and when they reckoned the time from *admission*, they must also have supposed that an attorney *admitted* three years, and just beginning to *practice*, was as likely to have an income as large as one who had been the same number of years both *admitted* and *practising*. If they did not suppose all this, they must have admitted this to be a very unequal tax.

The consequence of the continuation of this certificate duty would be a *thinning* of the profession. If a man could not get his daily bread by it, he must leave it, and seek some other employment to enable him to live, and the profession would find its level. The per-

sons who would be obliged first to desert the profession, would be those of small means and income—the weakest falls to the ground first; and this would particularly be the case, as the certificate duty presses more upon the attorney with small practice than upon the one possessing a large one. But would this *thinning* be desirable to, and for the benefit of, the public at large, and fair and just to those who are to be thinned?

It is said to be for the public good, that small alehouse keepers should be lessened in number. Suppose it to be equally beneficial to the public, that attorneys with small practice should be thinned. The operation of reducing by tax the alehouse keepers, and the attorneys, will be attended with very different consequences. To be a publican, requires but little capital; his education is not expensive, and a little capital will set up a man in a *small* trade. He, too, is generally of some other calling, either a small farmer, but mostly some person bred to, and having left some other employment; when he, therefore, is driven from his trade by taxes, his loss of capital is but small, and he can resort to his other or former calling for a living. The attorney, on the contrary, on an average, does not enter his profession, exclusive of his early education, under a capital of 1000*l.*, and confines himself exclusively to his profession, by reason of its requiring his whole time to get master of it. Tax the attorney, and compel him to leave the profession; he must then give up his whole capital without any chance of getting a living in another way. But before he does this, great mischief will be done to the public; however honest he may be, distress, a prospect of ruin, will compel him to resort to those means of living which are a disgrace to the profession, and a detriment to the good of society at large. He will be for ever stirring up his neighbours to litigation, and be stamped a pettifogging lawyer.

Then that it is unfair, *after* having expended a capital in entering a profession, to tax to such an amount, that those who have embarked, must leave their calling and lose their capital, no one for a moment will doubt.

It is admitted, however, that the profession is over-stocked, and that a thinning, to a reasonable degree, is desirable. It seems, however, the only way to attain that end, without doing injury to the public, injustice to the individual, and disgrace to the profession at large, is by taxing at the time of entrance into the profession; that persons may expend their money with their eyes open, and not (as would now be the case were an additional tax, as the proposed income tax, put on,) be entrapped into the loss of their education and money. But if there must be an increased tax, and it is imposed when entering the profession, (as a larger tax on admission would be,) it must not be too high, or the profession would get into another extreme. Those who were already installed, would enjoy a monopoly in defiance of the scale of fees, and in direct opposition to the public good,

We also request attention to the following remarks relating to the *impolicy*, as concerns the public, of improperly taxing the profession:

The petitions which have been presented to parliament for the repeal of the duty payable by solicitors for their annual certificates, have my most cordial concurrence, and I beg to offer some reasons which appear to me to justify the requisition of the petitioners, and to vindicate the propriety of their claims.

In the first place, it appears to me an illiberal tax upon a profession, which necessarily requires a great outlay of capital—capital often hardly earned, and ill-spared.

It has often, Sir, been attributed to our country as one of its peculiar and characteristic excellencies, that its polity permits, nay, invites the humblest possessors of talent to aspire to, and to enjoy, a position in the ranks of its liberal professions. And when we consider the nature of the profession of the law, how its successful prosecution, and how, to a great extent, the welfare of the community must depend upon the talent and intellectual resources of its members, it appears to me that exorbitant taxation is ungenerous impolicy. No person acquainted with the profession, need be told of the expenses and sacrifices which must necessarily be incurred in the preliminary education of attorneys. A heavy tax, in the shape of stamp duty, must be paid at all times; a considerable, and in many cases a very high premium, a course of unremunerated labour for five years, with various fees upon admission. These, Sir, appear to me sufficient drawbacks in the attainment of a profession, without imposing further obstructions to its benefits.

This certificate duty, operates with excessive severity upon those who are just beginning to realize the rewards of their long uncompensated exertions, and has a considerable tendency to deter much useful and efficient talent from the legal profession, and divert it into other channels doubtlessly less distinguished, but certainly less precarious. I do not say that this would be wholly obviated by the abolition of this duty, but certainly it affords a reason why the burthen should be somewhat alleviated. Nor do I suppose, that the ranks of the legal profession will ever present any great numerical deficiency, for wealth will never scruple to embark in a profession that confers social distinction; but talent may be deterred and obstructed, and hence the tax operates mischievously.

By the recent financial arrangements, attorneys in common with other professions, will be subjected to the operation of the income tax, and this affords an additional reason why they should be absolved from their certificate duty, as by the united pressure of the double taxation, they will sustain a burthen certainly heavier than that imposed upon any other profession. The pecuniary advantages resulting from the practice of the law, are not more than adequate to what fairness requires; why then should its gains be circumscribed by such heavy taxation?

F. F.

F.

REMOVAL OF THE COURTS FROM WESTMINSTER.

WE have received some letters on the subject of the removal of the Courts from Westminster to the neighbourhood of Chancery Lane, and regret to see that no progress has been made during the present session towards reviving the Committee of Inquiry. We are aware that the present Lord Chancellor, and one of the Law Officers of the Crown, are not favourably disposed towards the measure; but we think this kind of passive opposition is owing to a want of sufficient knowledge of the details of the subject, and that the publication of the evidence taken last session, under the superintendence of the then Solicitor General, would clearly establish the paramount utility of the measure.

Of all the law reforms which have been made, or are still projected, we know of none that would be more beneficial both to the suitor and the profession, than the concentration of the Courts and offices in or near Lincoln's Inn Fields. We trust Sir Thomas Wilde will renew the committee, and bring the inquiry to a conclusion. Let us have the facts. Sooner or later the measure must be carried; but a little more energy is wanted. We know not who to blame, and trust that our next notice of the subject will be a satisfactory one.

SUPERIOR COURTS.

Rolls.

SOLICITOR AND CLIENT.—COSTS.

It is not a sufficient objection to an application for the usual order to tax a solicitor's bill, to say that the bill does not contain taxable items; but if there have been various dealings and transactions between the client and solicitor, which have led to accounts irrespective of the account for costs, the Court will not extend the order to the taxing of those accounts, but the client must file a bill.

A petition had been presented in this matter, praying for the usual reference to tax the bills of costs of Mr. Corbett, and his partner, against the petitioner, and for an account of all dealings and transactions between him and the petitioner, and that on payment of what might be found due to them from the petitioner, they might be directed to deliver up to him all deeds, papers, and writings, in their custody, or power, belonging to him. An objection was taken in limine to the hearing of the petition, on the ground of there being no common law or taxable items in the bill; but this the Court held could not be sustained.

Kindersley and *Wright* for the petitioner, said, that it appeared by the affidavit of the respondent Corbett, that in January last, he sent a letter to the petitioner, with the bills of costs of himself and his late partner, together with an account current, and that in such letter he stated, that on payment of the balance due to himself and his late partner, he was ready to deliver up to the petitioner all papers belonging to him in their, or either of their, possession. There could, therefore, be no objection to an order being made in the usual form.

Pemberton for the respondent, said, that the order must be confined to taxing the costs, for charges of usury and other similar charges were made by the petitioner with reference to the items in the cash account, and they could only be taken cognizance of in a suit which must be instituted for the purpose.

Kindersley in reply, contended, that as the costs were mixed up, and formed part of the cash account, and they must all, therefore, be included in the reference; and he cited *Horlock v. Smith*, 2 Myl. & Cr. 495; and *Ex parte Aikin*, 4 B & Ald. 47.

The *Master of the Rolls* said, that *prima facie*, when an order for taxation was applied for, it must be taken in the common form. The Court had not jurisdiction to direct an account to be taken, except so far as the same might be connected with the bill of costs; but the common direction would embrace any account in which costs were included. Such a direction must be given in this case, and the costs of the petition must be reserved.

Ex parte Corbett.—March 2, 1842.

Queen's Bench.

[Before the four Judges.]

INSOLVENT DEBTOR—EVIDENCE.

A voluntary assignment of property made by an insolvent, within three months before the commencement of his imprisonment, though made for the benefit of all his creditors, is within the 7 Geo. 4, c. 57, s. 32, and is void as against the assignee of the Insolvent Debtors' Court.

A copy of a vesting order made by that Court and sealed with the seal of the Court, but signed only by the deputy of the officer appointed to grant such orders, is admissible in evidence, under the 1 & 2 Vict. c. 110, ss. 46 & 105.

Trover for goods alleged to belong to the insolvent. The plaintiff was the provisional assignee of the insolvent; the defendant was a person to whom within three months before the commencement of his imprisonment, Wright had executed a deed of assignment of his effects for the benefit of all his creditors. The defendant pleaded first, not guilty, secondly, that the plaintiff was not assignee, and thirdly, that Wright was not lawfully possessed of the said goods, &c. The cause was tried before Mr. Baron Gurney, when evidence was given to shew, that the deed had been executed voluntarily, and the jury found that

fact to have been proved. A verdict was taken for the plaintiff subject to a motion on the question, whether a deed of assignment in trust for the benefit of all the creditors, was void under the 7 Geo. 4, c. 57. In making out his case, the plaintiff produced in evidence a copy of a vesting order of the Insolvent Court, sealed in a proper manner but only signed by the deputy. It was contended, that being only signed by the deputy, it could not without proof of the appointment of such deputy of the officer of the Court be received in evidence. The learned judge, however, admitted it, and on that as well as on the other ground, the rule for a new trial was obtained. The case was argued at the beginning of the term, and the Court took time to consider.

Mr. Justice *Patteson* now delivered the judgment of the Court. "This was a case tried before Mr. Baron *Gurney*, and the question was, whether an assignment, made by a man named *Wright*, for the benefit of all his creditors, was void in law, being voluntary, and having been made within three months before imprisonment. The question, whether the assignment was in fact voluntary, was left to the jury, and the jury found that it was so. It was said in argument, that no assignment for the benefit of all the creditors, even though voluntary, could be void within the 7 W. 4, c. 57, s. 32, and it was said, that such an assignment had been held to be valid in *Davis v. Acocks*.^a There, however, such an opinion had been merely intimated, but in *Benns v. Tinsley*,^b the Court held, that such an assignment might be void within the statute, and the assignment there was held to be so. The case of *Knight v. Ferguson*,^c which was supposed to lay down a different rule, is distinguishable from the present. There the assignment had been made through the pressure of creditors, or for valuable consideration, and was distinctly held by the Court not to be a voluntary assignment, and on that ground the decision proceeded. Another objection raised in this case was, as to the proof of the vesting order. A paper was produced, apparently coming from the insolvent Court and sealed with the seal of the Court, but signed only by the deputy of the officer appointed to grant such orders. The 46th & 105th ss. are those which are applicable to this point. It was contended, that before this paper was admissible in evidence, the appointment of the deputy must be proved. We think that there is nothing in the objection. The act of parliament gives authority to grant the certificate to the officer or his deputy, and makes the certificate so granted sufficient for all purposes of evidence. Under these circumstances we think that the rule for a new trial must be discharged."

Rule discharged. — *Jackson assignee of Wright v. Thomson*.

^a 2 Crom. M. & R. 461.

^b 7 Adol. & Ell. 869.

^c 5 Mee. & Wels. 359; 1 Gale 251; 5 Tyr. 963.

Common Pleas.

SLANDER.—PLEA OF JUSTIFICATION.

To an action of slander the defendant pleaded not guilty. The words proved were used of the plaintiff in her character of servant, imputing to her improper conduct in walking and gossiping with a married man. Evidence was tendered at the trial to prove the truth of the words spoken, but held, that it was not admissible.

Mr. Serjt. *Shee* moved for a rule, calling upon the plaintiff to shew cause why there should not be a new trial of this action, upon the ground of the improper rejection of evidence. It was an action of slander, and the declaration alleged that the plaintiff, being a servant in the employ of one *Anne Catlin*, the defendant, *Emma Webb* used concerning her, to the said *Anne Catlin*, the following words: "You are not aware what kind of a girl you have. If you were, you would not keep her; for I can assure you she is often out with our married man, and she was out with him last Sunday morning; and I know she knew that he was a married man, for I told her; and more than that, when you were in the country, she was out gossiping until eleven o'clock at night;" by means whereof the plaintiff was dismissed from her service. The defendant pleaded not guilty. At the trial before *Coltman, J.*, evidence was given to shew that Mrs. *Catlin* and Mrs. *Webb* were neighbours, and that the former having been out of town, the latter spoke the words imputed to her by the declaration, of and concerning the plaintiff, on her return. For the defendants, evidence was offered to shew that the words were not spoken with any malicious meaning, and that they were true; but the evidence was rejected, and the learned Judge having directed the jury to draw their own conclusions whether the words were used with an intention to give important information, in which case they would have assumed the character of a privileged communication, or whether they were spoken only as idle gossip, when the plaintiff would be entitled to a verdict, the jury found for the plaintiff, with 10s. damages. It was now contended that the words proved being perfectly innocent in themselves, the plaintiff was bound to prove malice in fact; and that as she had not done so, it was competent for the defendants, under the plea of the general issue, to give evidence disproving malice. The cases of *Manning v. Clement*, 7 Bing. 362; and *Bromage v. Prosser*, 4 B. & C. 247, were cited.

Tindal, C. J.—I think that if we granted this application, we should break in upon the established rule, that the truth can never be given in evidence, unless it is put upon the record. I do not see how this could be taken to be a privileged communication; and if it had been so considered, the truth of the words would be immaterial. The case was fairly left to the jury, and the rule must be refused.

Rule refused. — *Romsey v. Webb and Wife*, H. T. 1842. C. P.

NoUs.

	Pleas and Demurrers.	Causes.	Further Directions and Costs.	Further Directions and Exceptions.	Exceptions.	Total.
Standing in the printed Book for Hearing at the commencement of Hilary Term, 1842	1	121	44	5	16	187
Matters set down after the Printing of the Book for Hilary Term and up to the Close of the Sittings (1842)	11	64	31	3	0	109
Matters in Consent Book	0	4	1	0	0	5
Total	12	189	76	8	16	301
Heard and disposed of, or removed from the General Paper :—						
As Short Causes	0	33	21	0	0	54
In the Regular Paper	9	20	14	0	4	47
Struck out, as Abated, or Compromised, or for some other reason	1	5	0	1	2	9
Transferred to the Book of Causes of the Lord Chancellor, after deducting those that have been re-transferred	0	71	24	5	5	105
Matters in Consent Book	0	4	1	0	0	5
Total	10	133	60	6	11	220
Balance undisposed of as above	2	56	16	2	5	81
Matters adjourned at the Request of Parties as their regular time for Hearing arrived	0	11	5	1	1	18
Total now for Hearing	2	67	21	3	1	99

Judgments.

Dean and Chapter of Ely v. Bliss, *plea*
 Willats v. Busby—Ditto v. Merceron, *cause*
 Langton v. Horton, *cause*
 Ashton v. Mc Dougall, *cause*
 Richardson v. Horton, *motion*

Pleas and Demurrers.

Lutwidge v. Raikes, *demurrer of defendants* Thomas and Robert Raikes
 Lutwidge v. Raikes, *demurrer of deft.* Ann Raikes

Matters which in regular turn, would have been heard on a former day; but which have been adjourned at the request of parties till after the First day of Causes in Easter Term.

Suckermore v. Dimes—*adj.* to come on with supplemental cause
 Millar v. Craig, *adj.* till after Term
 Warwick v. Richardson—Clarke v. Sewell—*exceptions—adj.* to prepare case
 Western v. Williams, *further directions and costs—adj.* to Michaelmas Term
 Wilson v. Mead—*adj.* to Michaelmas Term
 James v. James—*adj.* to Michaelmas Term
 Hodge v. Rexworthy—Ditto v. Hodge, *further directions and costs, and petition part heard—adj.* to Michaelmas Term
 Jackson v. Jackson—*adj.* to Michaelmas Term
 Rutter v. Marriott—Ditto v. Edden—*adj.* to Trinity Term
 Clunn v. Crofts—Crofts v. Davy, *further directions and costs, and supplemental suit—* to stand over
 Lane v. Hardwicke—*adj.* to last day after Trinity Term
 Lumsden v. Morison—*adj.* to Trinity Term
 Wyatt v. Sharratt, *adj.* to Michaelmas Term
 Leavena v. Edmondson—Ditto v. Lambert, 2 causes, *exceptions, further directions and costs, part heard, until revived*

Attorney Gen. v. Pretyman (St. John's Hospital)—*adj.* to Michaelmas Term
 Humble v. Humble, 3 causes, Ditto v. Scarborough, Ditto v. Johnson—Ditto v. Brandling—Ditto v. Humble, 2 causes, *further directions and costs—adj.* to Trinity Term
 Johnson v. Todd, 3 causes, *further directions and costs, and petition—adj.* to Michaelmas Term
 Whiteway v. Williams, *pro confesso—adj.* till answer filed
 First day of term—*Motions*

Matters which, in regular turn, would have been heard on a former day, but which have been adjourned at request of parties till the First day of Causes in Easter Term.

Thomason v. Moses, 2 causes, *further directions and costs, and supplemental suit*
 Page v. Broom—Ditto v. Page—Ditto v. Harris—Ditto v. Edwards—Ditto v. Ganderton, *exceptions of defendant Ganderton and others*
 Beckett v. Thornton—Beckett v. Swaine
 Hardcastle v. Cooper
 Attorney General v. Lewis
 Attorney General v. Merchants Venturers Society
 Attorney General v. Goodchild
 Attorney General v. Drapers' Company Howell's Charity
 Attorney General v. Bayly
 Shalcross v. Wright
 Townley v. Deare
 Cotham v. West, *exceptions*
 Artis v. Artis
 Hemmingson v. Gylby
 Attorney General v. Corporation of Newcastle-upon Tyne
 22d April—Strickland v. Strickland, 2 causes
 Wood v. Pattison
 Attorney General v. Wilson—set down Jan. 17
 Bonnor v. Bonnor

Undisposed of Matters set down since the Printing of the Book for last Term, and up to the present time 6th April, 1842).

Hamlyn v. White, 2 causes, further directions and costs—(January 31)

Richardson v. Horton—Ditto v. Taylor—Ditto v. the Earl of Derby, exceptions, 3 sets of plaintiffs and defendants—(January 31)

Evans v. Brown—(January 31)

29th April—Brown v. Keating—(January 31)

Evans v. Williams—(January 31)

Armstrong v. Hinves—Armstrong v. Somerville—Ditto v. Clark, further directions and costs—(February 9)

Arbuthnot v. Adams—(February 9)

Clark v. Yonge—Yonge v. Ditto—(February 10)

Reedhead v. Wells—(February 10)

Leigh v. Leigh—(February 10)

Greet v. Greet, further directions and costs—(February 14)

Freeman v. Day, fur. dirs. and costs—(Feb. 16)

Attorney General v. Potter, exons—(Feb. 19)

Robinson v. Wood, 2 causes—Ditto v. Spearman, further directions and costs—(February 19)

Rowland v. Lomax, fur. dirs. and costs—(Feb. 21)

Nash v. Morley—set down February 23

Harvey v. Harvey, fur. dirs. and costs—set down February 24

Trezevant v. Fraser—Trezevant v. Mortimer—Ditto v. Aitken, further directions and costs—set down February 26

Sidebotham v. Barrington, further directions and costs—set down February 28

March v. Attorney General, 4 causes, exons of defendants, and further directions and costs—set down February 28

Gien v. Badley—Ditto v. Thompson, further directions and costs—set down March 3

Joner v. Thompson, 2 causes, further directions and costs—set down March 4

Hutton v. Mascall—Moneypeenny v. Ditto, further directions and exons—set down March 9

Barber v. Hollington, further directions and costs—set down March 12

Richards v. Porter—Greenslade v. Ditto, 2 causes, further directions and costs—(set down March 12)

Attorney General v. Birch, exceptions—set down March 19

Dalton v. Bellamy—Girdlestone v. Knight, further directions and costs—set down March 19

Dean v. Long—Ditto v. Hewett—Ditto v. Clarke, further directions and costs—set down March 21

Attorney General v. Earl Talbot—Ditto v. Mayor of Stafford—Ditto v. Temple—Ditto v. Norman, further directions and costs—set down March 23

Bourne v. Bourne—(April 15)

Attorney Gen. v. Bosanquet, at the request of defendant—(April 15)

Idle v. Shedden, at the request of deft.—(April 15)

Hughes v. Eades—(April 15)

Holland v. Baker—(April 16)

Crockett v. Perry—(April 18)

Evanson v. Dawes—(April 18)

Bouverie v. Milner—(April 18)

Deare v. Elwyn, at the request of deft.—(April 19)

Frankton v. Hugo—(April 18)

Langton v. Horton—(April 19)

Beadman v. Beadman—(April 19)

Sheppard v. Cuttill—(April 19)

Sayers v. Lacon—(April 19)

Rhodes v. Rosser—(April 19)

Cowie v. Hodgson—(April 20)

Swaffield v. Nelson—(April 20)

* The dates within parenthesis indicate the days when subpoena notes returnable.

Gibbon v. Kearns—(April 20)

Beatson v. Nicholson—(April 20)

Ward v. Inchley—(April 20)

Smith v. Beesley—(April 20)

Hall v. Palmer—(April 21)

Westwood v. Tuckwell—(April 23)

Platt v. Platt—(April 23)

Hawkins v. Hawkins—(April 23)

Attorney General v. Mayor of Totness—(April 24)

Mourilyan v. Sturges—(April 24)

Gresley v. Lord Chesterfield—(April 24)

Wolfe v. Findlay—(April 24)

Baker v. Garvy—(April 24)

Short—Richards v. Bothamley—(April 24)

Queen's Bench.

NEW TRIALS

Remaining undetermined at the end of the Sittings after Hilary Term, 1842.

Easter Term, 1840.

Middlesex—Claridge v. Latrade
[*Enlarged till special case determined.*]
York—The Manchester and Leeds Railway Company v. Fawcett
(*Stands for arrangement.*)

Easter Term, 1841.

London—Alban, trustee, &c. v. Hayman
Hertford.—Doe d. Crawley, Esq. v. Williamson and others
Glamorgan—Doe d. of the Duke of Beaufort v. Gough
Chester—The Mayor, Aldermen, and Burgesses of the Borough of Macclesfield, in the county of Chester v. Walker.
Doe d. Mayor, Aldermen, and Burgesses of the city of Chester v. Francis
Carnarvon—Roberts v. Jones
Denbigh—Williams, clerk v. Hughes and others
Monmouth—Morgan, Bart. v. Powell
Grover v. Price
Hereford—Bydges, Bart. v. Lewis
Worcester—Doe d. Evans, a pauper, v. Page
Stafford—Blagg v. Appleby
Cornwall—Roscorla v. Thomas
Collins v. Horrell, the younger
Wilts—Ogilvie v. Dallimore
Devon—Atkinson v. Raleigh and others
The Queen v. J. Ames and another
Pinsent v. Knox
Somerset—Doe d. Parsley and others v. Day
Laver v. Hawkins
Hants—Mant v. Collins and another
Cambridge—Barley v. Sandle and others
Bedford—Doe d. Crawley, Esq. v. Williamson and others
Suffolk—Doe d. Pye v. Bramwhite
Denny v. Clarke
Norwich—Stannard v. Bush
York—Doe d. Metcalfe of Ivelett v. Metcalfe of Thwaite
King v. Proctor
The Queen v. W. E. Scott and another
Lancaster—Munn and others v. Negrepoute
Catterall v. Kenyon and Wife
Durham—Hedley v. Bainbridge
Trinity Term, 1841.
Middlesex—Coats & anor. v. Chaplin & anor.
Jones v. Clarke
London—Crotty v. Price and another
Rowland v. Blakesley and others
Green v. Steer
Hey v. Wych

Michaelmas Term, 1841.

Middlesex—Tribe v. Whicher
 „ Metcalfe v. Fowler
 „ Carter v. James
 „ Smythies v. Southall and another
 „ Gardner v. M'Mahon
 „ Thomas v. Rees
 London—Chapman, one of the public officers, &c.
 v. White and others
 „ Boucher v. Murray
 „ Hayward v. Heffer and another
 „ Churchill v. Bertrand
 York—Moor and another, churchwardens, &c. v.
 Cook, the younger
 „ Same and another v. Same.
 „ Thompson v. Mauleverer
 „ Carr v. Foster and others
 „ Jacques v. Mackie
 Doe d. Robinson & others v. Hird & anor.
 Lancaster—Bateman and others v. Pinder
 „ Morris v. The Preston and Wrye Rail-
 way Harbour Dock Company
 Cambridge—Doe v. Pope
 „ Doe d. Stebbing v. Crowden
 „ Peyton, clerk v. Watson
 Norfolk—Martins v. Upcher, Esq. and another
 Stafford—Bourne v. Alcock
 Oxford—Hardy v. Stone and another, admor.
 Monmouth—Bevan v. Gething and others
 Surrey—Doe d. of Walton v. Penfold
 „ Lamb, executrix v. Gibbons
 „ Doe d. Levy v. Horne
 „ Hodgkinson, Gent. v. Wyatt
 „ Renno v. Bennett
 Surrey—Doe d. Levy v. Alcock and others
 Sussex—Whittington v. Boxall and others
 „ Edwards v. Gilbert and others
 Essex—Dawson v. Dacre, clerk to trustees, &c.
 „ M'Intosh v. New College
 Kent—Coates v. Hopkins
 Radnor—Lewis v. Meredith
 Glamorgan—The Queen v. The Mayor, Aldermen,
 and Burgesses of the Borough of
 Swansea
 Leicester—Goddard & anor. v. Ingram & anor.
 Bristol—Miles v. Bough
 „ Wolseley and another v. Cox
 „ Same v. Same
 Wilts—Williams v. Ford. (*In replevin*.)
 Cornwall—Bache v. Martin
 Devon—Vickery, assignee, &c. v. Reed
 „ The Queen v. The Inhabitants of Challa-
 combe

Hilary Term, 1842.

Middlesex—Smith v. Walpole
 „ Hall v. Fearnley
 „ Wright v. Glover
 „ Ross v. Clifton and others
 „ Same v. Same
 London—Gregson and others v. Ruck and others
 „ Same v. Same
 „ Hemp v. Garland, administrator, &c.

SPECIAL PAPER.

EASTER TERM, 1842.

*Archbishop of York v. Trafford and others
 Howard v. Gossett and others
 Richards v. Dyke and another
 Chapman v. Beecham. (*In replevin*.)
 Vaughan and Ux, admor. v. Morgan, executrix
 Pegg v. Miller
 Blumenthal, trading, &c. v. Castellan & anor.
 Taylor v. Rolf and others
 Taylor v. Moor

*Doe d. Earl of Egremont v. Hellings
 *Same v. Forward
 Jackson v. Magee
 Warren v. Bushell
 Gibson v. Iveson and another
 Percival and others v. Allanson
 Burdekin & anor., assees., &c. v. Jones
 Ransford and others v. Bosanquet. (*In error*.)
 Hunt & anor., assees., &c. v. Robins
 The Birmingham, Bristol, and Thames Junction
 Railway Company v. White
 The Scriveners' Company v. Brooking
 Tomsett v. Clifton and others
 Ross v. Same
 *M'Intosh v. Hamilton, clerk
 Anderson and others v. Thornton
 Same v. Rees
 Minshaw v. Hill
 Purton v. Brooks
 Templeton v. Chadwick
 The Mayor, &c., Governors of St. Bartholomew's
 Hospital v. Flight
 Hellings, clerk v. Pratt & anor. executors, &c.
 Codrington, Bart. v. Curlewis
 Townshend v. Wilkin
 Helyer v. Cottrell, executrix, &c.
 The Cheltenham and Great Western Union Rail-
 way v. Daniel
 Stanley v. Hayes
 Wright v. Watts
 Clark, the younger v. Jennings
 Sutton v. Jabet
 Russell v. Shenton
 Mittelhuber, who has survived, &c. v. Fullarton
 Bell, public officer, &c. v. Lewis
 The Salters' Company v. Jay
 Hoggins and others v. Gordon and others
 Strong v. Ramsay
 *Price and another v. Quarrell and another
 Timms v. Williams
 Garton v. Robinson
 Milton v. Griffin and others
 Evers & anor., assees., &c. v. Rufford & others
 Vorley v. Hebbert
 *Brisco, Bart. v. Fell
 White and Wife v. Cullingford
 Berry v. Claudet
 Colnaghi and another v. Ward
 *Tracey v. Taylor
 *King v. Greenhill
 The Company of Proprietors of the Clarence Rail-
 way v. The Great North of England, Clarence,
 and Hartlepool Junction Railway Company.
 Constable, Bart. v. Osbaldeston
 The Eastern Counties Railway Company v. Fair-
 clough
 Same v. Cooke
 Same v. Gillie
 Same v. Robertson
 Merceron, executrix, &c. Webster
 *Yates v. Aston
 Kightley v. Schofield and another

Common Pleas.

REMANET PAPER of Easter Term, 5th Vici. 1842.

Enlarged Rules.

Wynne v. Wynne and Ux.—to 1st day
 Newton and Ux. v. Harland—to 2d day
 Claridge v. M'Kenzie—to 5th day
 Gibson and another v. Brand—to 6th day
 Same v. Same—to 6th day
 Same v. Price—ditto

* Special cases—the rest are demurrers.

Watt, jun. v. Cobb—to 8th day
 Cobbold v. Chilver—to 9th day
 Enlarged generally—In re Inman
 NEW TRIALS of *Michaelmas Term last*.
 Middlesex—Cassidy v. Kent
 „ Learmouth v. Lamb
 London—M'Laughlin v. Pryor
 „ Bell P. O. v. Gardiner
 „ Callander v. Dittrich
 „ Theilhemer v. Colebatch
 Herts—Gibson v. Muskett
 Liverpool—Brancher, assignees v. Molyneux
 NEW TRIALS of *Hilary Term last*.
 Middlesex—Tucker and others v. Inman & anor
 „ Bulmer and another v. Gilman
 „ Clarke v. Swansea Water Works Co.
 „ Dukes v. Porter
 „ Lane v. Passenger
 London—White v. Nicholson
 „ Cottam and another v. Partridge
 „ Crawshaw v. Thompson and others
 „ Tugman v. Hopkins, jun.
 „ Harrison & others v. Heathorne & others
 „ Same v. Same
 „ Same v. Same
 „ Borrodale, exor. v. Hunter, Bart.
 „ Clegg & anor. v. Henderson & another
Cur. Ad. Vult.
 Bonzi v. Stuart
 Same v. Same
 Aylesbury Railway Company v. Mount
 Collyer v. Stennett
 Alexander and another v. Burchfield
 Bartholomew v. Carter
 Belcher, assignee v. Capper and others
 Skinner, secretary, &c. v. Lambert
 Crune v. Price and others

DEMURRER PAPER

OF EASTER TERM, 5th VICT. 1842.

Friday	15th April	} <i>Motions in Arrest of Judgment.</i>
Saturday	16th	
Monday	18th	
Tuesday	19th	
Wednesday	20th— <i>Special Arguments</i>	

Grimson v. Fell, clerk
 Gledstanes v. Earl of Sandwich and another
 Sturtevant v. Ford
 Sanderson and others v. Collman and another
 Lloyd and others v. Same
 Bradbee v. Christ's Hospital
 Arnold v. Mayor, &c. of Poole
 Foulkes v. Scarfe and others
 Scott, Bart. and another v. Chappellom
 Same v. Handiside
 Same v. Taylor
 Fishmongers' Company v. Robertson, sued, &c.
 Same v. Booth, sued &c.
 Same v. Stains, sued &c.
 Albon and another, trustees v. Pyke
 Kennard and another v. Knott
 Freeman v. Curtis
 Howarth v. Tollemache, Esq.
 Morrison and others v. Trenchard
 Rowcliffe v. Cliffe
 Siggers v. Stephen
 Thursday 21st April
 Friday 22—*Special Arguments*
 Williams v. Cooke
 Ansted and others v. Wilkinson
 Saturday 23 April
 Monday 25—*Special Arguments*
 Tuesday 26
 Wednesday 27
 Thursday 28

Friday	29— <i>Special Arguments</i>
Saturday	30
Monday	2d May— <i>Special Arguments</i>
Tuesday	3
Wednesday	4
Thursday	5
Friday	6
Saturday	7
Monday	9

Eyrequeur.

NEW TRIAL PAPER

FOR EASTER TERM, 1842.

*For Judgment.**Moved Michaelmas Term, 1841.*

Middlesex—Daly v. Thompson
(Heard 12th Nov. 1841)
 Lincoln—Holmes v. Poole *(Heard 1st Dec. 1841)*
 Exeter—Fursdon, executrix v. Clogg
(Heard 2d. Dec. 1841)
 York—Rawdon and another, assignees &c. v. Wentworth and another
(Heard 4th Dec. 1841)
 Newtown—Fauntleroy v. Jones
(Heard 18th Jan. 1842)
 Middlesex—Smout v. Ilbery
(Heard 12th Feb. 1842)

*For Argument.**Moved Hilary Term, 1842.*

London—Bain, P. O. v. Cooper and another
 „ Rapson v. Cubitt
 „ Thornton v. Charles
 „ Horne, clerk to trustees v. Ramadale
 „ Horne, clerk to commissioners v. Ramadale
Moved after the 4th day of Hilary Term, 1842.
 Middlesex—Hart v. Wild
 „ Levy v. Lyons
 „ Smith v. Henderson
 „ Lewin v. Edwards

SPECIAL PAPER.

REMANETS FROM HILARY TERM, 1842.

For Judgment.

Sorsbie and others v. Park
(Heard 22d Nov. 1841.)

For Argument.

*Skey v. Fletcher the elder, and another
(Part heard 22d Nov. 1841.)
 Taylor v. Ashton and others
 Dyer v. Stephens
(Part heard 26th Jan. 1842.)

*Doe d. Mundy v. Mosdell
 Acraman, A. J. v. Cooper and others
 Acraman, W. E. v. Cooper and others
 Mabon v. Townsend
 Quarrington v. Arthur
 *Jones v. Gooday
 Eaglesfield v. Hardie
 Pascoe v. Vyvyan, Bart.
 Dakins, clerk v. Seaman, clerk
 *Doe d. Daniels and others v. Woodroffe
 De Winton and others, assignees, &c. v. Jon.
 *Russell and wife v. Smyth

PEREMPTORY PAPER

FOR SATURDAY, THE 16TH APRIL, 1842.

To be taken at the Sitting of the Court.

Halifax and others v. Hughes, P. O.
 Hutchinson, P. O. v. Hughes, P. O.
 Grazebrook and another v. Pickford and another

Smith v. Lomer
 Smith v. Moor
 Neilson and others v. Hareford and others
 Jupp v. Aris and another

Adlington and three others v. Coles, clerk
 Gill v. Williams
 Crowley and others v. Wright
 Roadnight v. Green

Court of Arbiters.

GENERAL LIST OF PETITIONS FOR HEARING AT WESTMINSTER.

Easter Term, 1842.

First day of Term.

Motions only.

Adjourned Petitions.

Rogers v. Jones
 Higgins v. Caton
 Hatton v. Pilcher
 Surridge v. Wilson
 Somers v. Siddons
 Cooper v. Emerson
 Carr v. Wilckins
 Fosbrooke v. Fisher
 Malachy v. Malachy

New Petitions.

Smith v. Higham
 Hares v. Jones

Smith v. Hildyard
 Foster v. Marris
 Nainby v. Nainby
 Lidicott v. Mills
 Grundy v. Grundy
 Wilson v. Batson
 Dilworth v. Gibson
 Dyer v. Spencer
 Stuart v. Lamont
 Hill v. Clifton
 Bentall v. Wise
 Smith v. Gye and Hughes
 Mather v. West
 Turner v. West
 Watt v. Topling
 Prescott v. Halford
 Barnes v. Stratton
 Howden v. Litherland
 Green v. Monkhouse
 Warner v. Wimble
 Martelli v. Keichner
 Winter v. Sharp

Peirman v. Peirman
 Gurney v. Glascott
 Hallifax v. Ridge
 Maclean v. Evans
 Knapp v. Strange
 National Bank of Scotland v.
 Arnold
 Shaw v. Daintry and Ryle
 Footner v. Jackson
 Paine v. Fletcher
 Thompson v. Jones
 Magnay v. Anateen
 Bentley v. West
 Parr v. Harriott
 Smith v. Clarke
 Stranger v. Wise
 Cristall v. Jones
 Heron v. Brooke
 Pennell v. Styan
 Tromer v. Grundy
 Price v. Lamprell
 Wild v. Wild

CHANCERY SITTINGS,

In and after Easter Term, 1842.

Before the Lord Chancellor.

AT WESTMINSTER.

Friday .. April 15	Appeal Motions.
Saturday	16 Ditto and Appeals.
Monday	18 Petition Day.
Tuesday	19 } Appeals.
Wednesday	20 }
Thursday	21 Appeal Motions.
Friday	22 }
Saturday	23 }
Monday	25 } Appeals.
Tuesday	26 }
Wednesday	27 }
Thursday	28 Appeal Motions.
Friday	29 }
Saturday	30 }
Monday .. May 2	2 } Appeals.
Tuesday	3 }
Wednesday	4 }
Thursday	5 Appeal Motions.
Friday	6 } Appeals.
Saturday	7 }
Monday	9 } Appeal Motions and Ap- peals.

Such days as his Lordship is occupied in the House of Lords excepted.

Before the Vice Chancellor of England.

AT WESTMINSTER.

Friday .. April 15	Motions.
Saturday	16 Ditto.
Monday	18 Petitions.
Tuesday	19 } Remaining Petitions and
Wednesday	20 } Causes.
Thursday	21 Motions.

Friday	22 { Unopped Petitions, Short Causes, & Gen ^l Paper.
Saturday	23 {
Monday	25 { Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Tuesday	26 {
Wednesday	27 {
Thursday	28 Motions.
Friday	29 { Unopped Petitions, Short Causes, & Gen ^l Paper.
Saturday	30 {
Monday .. May 2	2 { Pleas, Demurrers, Excep- tions, Causes, and Fur- ther Directions.
Tuesday	3 {
Wednesday	4 {
Thursday	5 Motions.
Friday	6 { Unopped Petitions, Short Causes, & Gen ^l Paper.
Saturday	7 { Causes, Exceptions, and Further Directions.
Monday	9 Motions.

Before Vice Chancellor Knight Bruce.

AT WESTMINSTER.

Friday .. April 15	Motions.
Saturday	16 { Causes, Exceptions, and Further Directions.
Monday	18 Petitions and Ditto.
Tuesday	19 { Pleas, Demurrers, Causes, Exceptions, and Fur- ther Directions.
Wednesday	20 {
Thursday	21 Motions and Ditto.
Friday	22 { Causes, Exceptions, and Further Directions.
Saturday	23 { Unopped Petitions, Short Causes, and Ditto.
Monday	25 { Pleas, Demurrers, Causes, Exceptions, and Fur- ther Directions.
Tuesday	26 {
Wednesday	27 {
Thursday	28 Motions and Ditto.
Friday	29 { Causes, Exceptions, and Further Directions.

Saturday	30	{ Unopp ^d Petitions, Short Causes, and Ditto.
Monday .. May	2	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	3	{
Wednesday ...	4	{
Thursday	5	{ Motions and Ditto.
Friday	6	{ Causes, Exceptions, and Further Directions.
Saturday	7	{ Unopp ^d Petitions, Short Causes, and Ditto.
Monday	9	{ Motions and Ditto

Before Vice Chancellor Wigram.

AT WESTMINSTER.

Friday .. April	15	Motions.
Saturday	16	{ Causes, Exceptions, and Further Directions.
Monday	18	Petitions and Ditto.
Tuesday	19	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Wednesday ...	20	{
Thursday	21	{ Motions and Ditto.
Friday	22	{ Causes, Exceptions, and Further Directions.
Saturday	23	{ Unopp ^d Petitions, Short Causes, and Ditto.
Monday	25	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	26	{
Wednesday	27	{
Thursday	28	{ Motions and Ditto.
Friday	29	{ Causes, Exceptions, and Further Directions.
Saturday	30	{ Unopp ^d Petitions, Short Causes, and Ditto.
Monday .. May	2	{ Pleas, Demurrers, Exceptions, Causes, and Further Directions.
Tuesday	3	{
Wednesday ...	4	{
Thursday	5	{ Motions and Ditto.
Friday	6	{ Causes, Exceptions, and Further Directions.
Saturday	7	{ Unopp ^d Petitions, Short Causes, and Ditto.
Monday	9	{ Motions and Ditto.

Rolls.

See the last Number, p. 479.

COMMON LAW SITTINGS,*In and after Easter Term, 1842.***Queen's Bench.**See p. 464, *ante*.**Common Pleas.***In Term.*

MIDDLESEX.	LONDON.
Wednesday..April 20	Friday.....April 22
Monday.....25	Friday.....29
Monday.....May 2	

After Term.

MIDDLESEX.	LONDON.
Tuesday.....May 10	Wednesday..May 11

The Court will sit at ten o'clock in the forenoon on each of the days in Term, and at half-past nine precisely on each of the days after Term.

The causes in the list for each of the above

sitting days in Term, if not disposed of on those days, will be tried by adjournment on the days following each of such sitting days.

On Wednesday the 11th day of May, in London, no causes will be tried, but the Court will adjourn to a future day.

Exchequer of Pleas.*In Term.*

MIDDLESEX.

1st Sitting,	Saturday, April 1
2nd Sitting,	Monday, 25
3rd Sitting,	Thursday .. May 5

LONDON.

1st Sitting,	Friday, April 22nd
2nd Sitting,	Monday, May 2nd
By adjournment, ...	Tuesday 3rd

After Term.

MIDDLESEX

LONDON.

Tuesday, .. May 10th	Wednesday May 11th
	(To adjourn only.)

The Court will sit at ten o'clock in Term.

The sittings in Middlesex will be continued from day to day, by adjournment, until the causes entered for those sittings respectively are disposed of.

PARLIAMENTARY INTELLIGENCE RELATING TO THE LAW.

Since our last list of bills before parliament, (p. 480, *ante*.) the following proceedings have taken place:

House of Lords.

Annual Indemnity.

[For 2d reading.]

To amend the Law relating to advances to Agents on goods.

[For 2d reading.]

Parish Property.

[For 2d reading.]

Forged Exchequer Bills.

[In Committee.]

Lord Campbell's three bills withdrawn. See p. 483, *ante*.

House of Commons.

Turnpike Roads

[For 2d reading.]

Annual Indemnity.

[Passed]

REPEAL OF CERTIFICATE DUTY.

Petitions have been presented from the Law Societies of North and South Shields, and Plymouth.

Small Debts Courts:

St. Briavel, Gloster.

NEW ORDERS IN CHANCERY.

The new Orders dated the 11th, but not issued till the 15th, relate to compelling *appearance*;—taking bills *pro confesso*;—the *appearance of infants*;—further suspending the first five Orders, and the 22nd Order of August, and amending the 10th, 11th, 12th, and 47th Orders of August.

The Legal Observer.

SATURDAY, APRIL 23, 1842.

— "Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

CHANCERY REFORM.

No. V.

THE reform of the Court of Chancery cannot stop where it is. In supporting the Chancery Judges' Bill we always contended that it must be accompanied by further and other changes in the Courts: and the truth of this remark will soon be forced on the legislature. The arrear of causes waiting for hearing was a crying evil, but there are others as grievous which remain untouched. It is of little use curing one sore if the disease breaks out almost immediately in some other place. Now we are well satisfied that the whole subject must be looked to, from the putting the bill on the file, to the final decree, and the appeal from that decree. What the suitor and the profession demand, is, that the present delay and expense of a suit in Chancery should be lessened; and it is no great satisfaction to either to be told that no delay, and no unnecessary expense, attend the hearing of a cause, if a great deal of unnecessary expense attend the working out the decree in the Master's Offices, or in the appeal from the first decree.

Before a year is past, we will venture to say, that, unless some alteration shall have been made in the Court of Chancery as an appeal Court, the arrear of appeals will be as great as in the time of Lord Eldon. This may be remedied by some timely alteration; but the state of the Master's Office is a more serious evil. This has very properly been called the citadel of the Court of Chancery. It is here that all the business of the Court in

its administrative capacity, as well as a great portion of its judicial business is disposed of. All that class of causes which can be brought on easily on one or two points, or which may be cut short by a hearing on a motion: in these the present machinery of the Court of Chancery is not felt as irksome or inconvenient. But in the great bulk of causes, where estates are to be administered, or other necessary matters to be inquired into, before an ounce of results can be obtained by the litigating parties in these cases, the misery and injustice that are frequently inflicted can only be known by those whose daily business it is to attend to it. It is, therefore, to the Master's Office, that particular attention should be directed; and no plan should be left untried to improve it.

If it be true that the Judges of the Court will soon lack employment, so far as original causes are concerned, why should the course recommended in this work not be tried? We mean, that of the Judges sitting as Masters on their own decrees. We sincerely trust this will be done, as we shall not be satisfied that we are wrong in recommending its adoption, until it has been tried, and failed. Or, at all events, why should not one or more Judges sit in chambers, as the Common Law Judges do, to hear points of practice, and thus save the suitor the expense and delay which now attend the most inconsiderable motions?

[We shall be glad to receive suggestions from our practical friends, on the best means of improving the mode of procedure in the Masters' Offices.]

NEW LUNACY BILL.

We return to the consideration of the Lord Chancellor's Lunacy Bill, which has been allowed to make a pause, giving time to weigh its merits, and judge what practical improvements it may be the means of introducing into the administration of the Law of Lunacy. We understand that a valuable use has been made of the interval by the Committee of the Incorporated Law Society. Upon the bill being laid before them, by the direction of the Lord Chancellor, they entered upon a careful consideration of the ameliorations of the course of proceeding and practice which may be introduced under the bill, and submitted their suggestions to his Lordship.

The evils which present themselves in the practice in Lunacy are similar to those which were the subject of well-grounded complaint as to Chancery proceedings, during the many years of expectation which preceded the Chancery Commission of 1826. Lord Lyndhurst's Orders of 1828, consequent on that commission, Lord Brougham's Orders of 1833, and the late contributions to Chancery Reform from Lord Cottenham and from Lord Langdale, have done somewhat for improving the mode of procedure in Chancery, though more remains to be done; but Lunacy has remained untouched—a peculiar province, defended from innovation by the vested interests of the Secretary of Lunatics and the Clerk of the Custodies in the fees of their offices. But that barrier is now passed, and the reform of this department is now certain.

Delay and expence, acting and reacting; delay causing expence, and expence causing delay, and every other irregularity, hang about lunacy proceedings as heavily as they did about Chancery proceedings prior to 1828. From the time when the inquisition of lunacy is held, and the individual found lunatic, to the period when the proceedings necessary for putting the person and property under due administration, can be concluded, an interval of from one to two years generally elapses, and these proceedings are conducted at an expence often ruinous to small properties, and needlessly large as to all.

The great length of time taken merely to install a committee in its office, arises chiefly from the mode of proceeding in the Master's Office. And first—the enquiry as to next of kin is conducted with as great nicety as if their title to property were to be decided, whilst the only object

is to ascertain who are the near family connections, from among whom the committees are usually chosen, and who ought to be represented in the proceedings, in order to protect the estate. This fact might be sufficiently ascertained by a short and summary enquiry on the spot where the parties reside, leaving any parties at liberty to come in before the Master or commissioner afterwards, and substantiate their title to appear as one of the next of kin.

The inquiry as to committees occupies a long time, owing to the mode of conducting it, upon states of facts and affidavits *pro* and *con*, as to the character of the competitors for the committeeship, proceeded in by hourly warrants at intervals of days or weeks. An enquiry that in this way occupies several weeks or months, could be much more effectually prosecuted in a single day by the commissioners examining on the spot, the persons proposed as committees, the witnesses offered in support of each, and independent persons of credit, who are acquainted with the parties. What would a great proprietor think of his solicitor adopting such a course of enquiry as that pursued in the Master's Office in this instance, had he directed the solicitors to engage him a steward?

The first enquiry as to next of kin and committees, and the second as to property and maintenance, might generally be conducted in a single inquiry, immediately, or within a short interval after the inquisition, before the commissioner who presides on the commission; and it should be his duty to see that the enquiry is conducted as soon as can be, and in the most proper manner. If this course of proceeding were adopted, the necessary steps from the inquisition to the order for maintenance, which now occupy, as we have ascertained, from one to two years, might, in ordinary cases, be completed in a week or month. The greater part of the evidence received would be on oral examination. The commissioner would take notes of the evidence, which would be preserved and indexed. States of facts would be discontinued where they were not wanted, and affidavits would be comparatively little used.

The other inquiries which have now to be conducted before the Master, and which would, under the Lord Chancellor's Bill, devolve upon the Commissioners, might, in like manner, be expedited and facilitated. These enquiries relate to the management of the estate and affairs of the lunatics, the Master being, for this purpose, the official auditor of the estate in each lunacy. The

object to be desired for the advantage of these estates is, that the method of proceeding adopted by the commissioner in discharging his duty of auditor, should be assimilated as far as possible, to that which would be adopted by a careful and skilled auditor of the estates of an individual proprietor.

There cannot be a necessity for the cumbersome machinery of petitions to the Court, and orders of reference to the Master, and states of facts, and affidavits as to questions of management of lunatic's estates, granting leases, altering and repairing buildings, &c. Let the commissioner but once satisfy himself by going to the spot and seeing the parties, what is most for the advantage of the lunatic and his estate, and a much more satisfactory judgment will be ever after formed by him in a day, than is now arrived at by weeks or months spent in applications to the Court, and references to the Master. To adopt such a method of proceeding as this, would be not only to substitute an expeditious and simple, for a tardy and cumbersome method of proceeding, but would, at the same time, be to give a substantial, in the place of a formal, protection to lunatics and their estates. By conducting the enquiry on the spot, and seeing both the parties interested, and independent persons, better evidence would be obtained, and a safer decision formed.

By the commissioners watching and controuling the course of proceeding in each lunacy, as is intended under the new bill, the estates of lunatics will have, as far as can be, the same protection that those estates have which are administered under the direction either of the owner himself or of his steward. The Lord Chancellor has charge over lunatic's estates, and delegates to the Masters the duty of watching the administration of them. But the Master knows nothing of any circumstances connected with the estate, beyond what the committees, heir at law, and next of kin, (parties too often interested in concealing the real truth and facts) may bring before him; so that it can only be a partial and nominal protection of the lunatic's rights and interests that the Master is enabled to give. The heir at law, who is often committee of the estate, may be desirous to apply the income in improving the rever-sionary value of the estate; the next of kin may be desirous to keep the lunatic on a small pittance, that the income may accumulate, or both parties may be well aware of the existence of a will which deprives

both of any interest in the property, and may therefore desire to get present advantages from it; the committee of the person may propose a scale of allowance for the lunatic's support, in which he is planning for his own advantage more than for the benefit and comfort of the lunatic; and the Master, under the present system, can do little to protect the lunatic. It is true, he can compare the different statements and proposals of the conflicting parties, where there are such; but such conflicts are the exceptions in lunacy. The commissioners, by their oral enquiries on the spot, and by the plan proposed by the bill of associating them with the medical visitors of lunatics, would be enabled to form their judgment as to the circumstances from more independent and complete information.

The saving of expence which may be effected under the bill, is in the proportion to the saving of time and trouble, and to the diminution of the official establishments. The great importance of the reduction of expenditure we look upon as being, that expence will not any longer form, as it now does, a valid excuse for irregularity in the proceedings; and that small properties will not be, as they now are, excluded from the protection of the law.

On pretty careful enquiry, we are led to believe, that the first proceedings up to the order for maintenance, are very seldom conducted at an expence of less than 300*l.*, and we think it probable that they would be found usually to cost as much as 400*l.* We have known instances in which, when the estates were small, (100*l.*, 200*l.*, or 300*l.* per annum) these first expences have amounted to sums varying from 400*l.* to 1000*l.*, and upwards.

The burden of expence does not end with the termination of these first proceedings, but is constantly recurring. If a committee dies, or becomes bankrupt, or changes his place of abode, so as no longer to be able to discharge the duties of the office, a new appointment cannot be obtained without an expenditure of 100*l.*, 200*l.*, 300*l.*, or more. If a lease has to be granted, or a barn to be built, 100*l.* or 200*l.* has to be spent in obtaining the permission of the Court to do the necessary act, so that it must often be a question whether it be more considerate to leave the property in a ruinous or unoccupied state, or to incur the expence attendant on the necessary steps for proper management. The passing of the accounts is, where the accounts are passed as they ought to be, according to the practice, an annual charge of a large

amount. We believe the cost of passing the accounts of committees would be found to vary from 15*l.* to 50*l.*, or more; a charge so burdensome to small estates, that solicitors are constantly in the habit of advising the committees *not* to pass their accounts annually, and orders are occasionally made for passing several years' accounts in one, owing to the expence at present of passing the accounts. In an estate of 150*l.* per annum, the passing the accounts, would at the present costs, be an annual charge of not less than 10*l.* per cent. on the income.

We can form but a vague idea what must be the total annual expenditure in costs connected with lunatics and their estates. We believe that there are about 500 Chancery lunatics, and that there are about 50 new lunacies each year. The costs of the first proceedings in these lunacies, taken at an average of 400*l.*, gives an annual expence of 20,000*l.* These first proceedings form but a small part of the business in lunacy, as must be well known to all who have attended the Lord Chancellor's Court on lunatic petition days, and we have little doubt that the total annual expenditure in costs, would be found to amount to between 50,000*l.* and 100,000*l.* per annum. How great then would be the boon to these unhappy suitors, if a fourth, a third, or perhaps a half, of the expense could be saved; and, at the same time, the required protection be more effectually given. We believe that by such a complete reform of the practice as the Lord Chancellor's bill gives the power to introduce, these objects may be attained, and that they may be attained without any diminution, but the contrary, of that fair and legitimate remuneration to the profession, which it is all essential to keep up, if the character and honor of the profession is to be maintained. And we are confident that the effect of this bill will be to increase very largely the number of these helpless wards of the Court. The number at present under its care is obviously altogether too small, out of all proportion to the number of the lunatics in the kingdom. To give extended, and speedier, and more economical protection, is a work of great public utility, and one that must ever reflect high credit on its author. Excepting the late new Judges' bill, it is one which will come more home to the need of the suitors themselves, than any judicial improvement which has been made for a considerable time past.

ORDER OF THE COURT OF CHANCERY.

11th April, 1842.

THE Right Honourable John Singleton Lord Lyndhurst, Lord High Chancellor of Great Britain, by and with the advice and assistance of the Right Honourable Henry Lord Langdale, Master of the Rolls, the Right Honourable Sir Lancelot Shadwell, Vice Chancellor of England, the Right Honourable the Vice Chancellor Sir James Lewis Knight Bruce, and the Right Honourable the Vice Chancellor Sir James Wigram, doth hereby, in pursuance of an act of parliament passed in the fourth year of the reign of her present Majesty, intituled, "An Act for facilitating the Administration of Justice in the Court of Chancery," and of an act passed in the fourth and fifth years of the reign of her present Majesty, intituled, "An Act to amend an Act of the fourth year of the reign of her present Majesty, intituled, 'An Act for facilitating the Administration of Justice in the Court of Chancery,'" order and direct in manner following, that is to say—

I. *Proceedings pro confesso*.—That in cases where the defendant shall not have put in his answer in due time after appearance, and the plaintiff shall be unable with due diligence to procure a writ of attachment to be executed against such defendant, by reason of his being out of the jurisdiction of the Court, or being concealed, or for any other cause, then such defendant shall, for the purposes of this Order, be deemed to have absconded to avoid the process of this Court.

That in cases where any defendant, who may be so deemed to have absconded, shall have appeared by his own clerk in court, or an appearance having been entered for him under the eighth of the Orders of the 26th day of August, 1841, he shall have afterwards appeared by his own clerk in court, the plaintiff may serve upon such clerk in court a notice, that on a day in such notice named (being not less than fourteen days after the service of such notice), the Court will be moved, that the bill may be taken *pro confesso* against such defendant; and the plaintiff is, upon the hearing of such motion, to satisfy the Court that such defendant ought, under the provisions of this Order, to be deemed to have absconded, and the Court being so satisfied, and the answer not being filed, may, if it shall so think fit, order the bill to be taken *pro confesso* against such de-

defendant, either immediately, or at such time or upon such further notice as under the circumstances of the case the Court may think proper.

That in cases where any defendant, who may be so deemed to have absconded, shall have had an appearance entered for him under the eighth of the Orders of the 26th day of August, 1841, and he shall not afterwards have appeared by his own clerk in court, the plaintiff may cause to be inserted in the London Gazette a notice, that on a day in such notice named (being not less than four weeks after the first insertion of such notice in the London Gazette), the Court will be moved, that the bill may be taken *pro confesso* against such defendant; and the plaintiff is, upon the hearing of such motion, to satisfy the Court that such defendant ought, under the provisions of this Order, to be deemed to have absconded, and that such notice of motion has been inserted in the London Gazette at least once in every week from the time of the first insertion thereof, up to the time for which the said notice shall have been given, and the Court being so satisfied, and the answer not having been filed, may, if it shall so think fit, order the bill to be taken, *pro confesso*, against such defendant, either immediately, or at such time, or upon such further notice as under the circumstances of the case the Court may think proper.

II. *Infant not appearing.*—That upon default by an infant defendant in not appearing to, or not answering the bill, the Court may, upon motion, order that the Senior Six Clerk not towards the cause may be assigned guardian of such infant defendant, by whom he may appear to and answer, or may answer the bill and defend the suit, upon the Court being satisfied that such defendant is an infant; and if the infant has not appeared, that the subpoena to appear to and answer the bill was duly served, and (whether the infant has appeared or not), that a notice of such motion was (after the expiration of the time for appearing to or answering the bill, and at least six clear days before the hearing of such motion), served upon or left at the dwelling-house of the person, with whom or under whose care such infant defendant was at the time of serving the subpoena, and was also served upon or left at the dwelling-house of the father or guardian (if any) of such infant, where the person with whom or under whose care the infant was at the time of such service shall not be the father or guardian of the infant, unless the Court

at the time of hearing such motion shall think fit to dispense with such last mentioned service.

III. *Notice at dwelling where no appearance.*—That the plaintiff shall, without special leave of the Court, be at liberty to serve any notice of motion, or other notice, or any petition, personally or at the dwelling-house or office of any defendant, who having been duly served with subpoena to appear to and answer the bill shall not have caused an appearance to be entered by his own clerk in court at the time for that purpose limited by the General Orders of the Court.

IV. *Solicitors' residence book suspended.*—That the first, second, third, fourth, and fifth of the Orders of the 26th day of August, 1841, shall not take effect until further order.

V. That the twenty-second of the Orders of the 26th day of August, 1841, shall be suspended until further order.

VI. *Amending Orders of August.*—That the Orders of the 26th day of August, 1841, shall be amended as to numbers 10, 11, 12, and 47, in manner following; (that is to say,)

10. *No writ of execution of an order.*—That no writ of execution shall hereafter be issued for the purpose of requiring or compelling obedience to any order or decree of the High Court of Chancery, but that the party required by any such order or decree to do any act, shall upon being duly served with such order or decree, be held bound to do such act in obedience to the order or decree.

11. *Attachment for disobeying order: sequestration.*—That if any party, who is by an order or decree ordered to pay money or to do any other act in a limited time, shall, after due service of such order or decree, refuse or neglect to obey the same according to the exigency thereof, the party prosecuting such order or decree shall, at the expiration of the time limited for the performance thereof, be entitled to a writ or writs of attachment against the disobedient party, and in case such party shall be taken or detained in custody under any such writ of attachment without obeying the same order or decree, then the party prosecuting the same order or decree shall, upon the Sheriff's return that the party has been so taken or detained, be entitled to a commission of sequestration against the estate and effects of the disobedient party, and in case the Sheriff shall make the return *non est inventus* to such writ or writs of attachment, the party prosecuting

the same order or decree shall be entitled, at his option, either to a commission of sequestration in the first instance, or otherwise to an order for the Serjeant-at-Arms, and to such other process as he hath hitherto been entitled to upon a return *non est inventus* made by the Commissioners named in a commission of rebellion issued for the non-performance of an order or decree.

12. *Notice of attachment and sequestration.*—That every order or decree requiring any party to do an act thereby ordered shall state the time or the time after service of the order or decree, within which the act is to be done, and that upon the copy of the order or decree which shall be served upon the party required to obey the same there shall be endorsed a memorandum in the words or to the effect following, viz.:—

"If you the within named A. B. neglect to obey this order (or decree) by the time therein limited, you will be liable to be arrested under a writ of attachment issued out of the High Court of Chancery, or by the Serjeant-at-Arms attending the same Court, and also be liable to have your estate sequestered for the purpose of compelling you to obey the same order (or decree)."

47. *Creditor.*—That a creditor who has come in and established his debt before the Master, under a decree or order in a suit, shall be entitled to the costs of so establishing his debt, and the sum to be allowed for such costs shall be fixed by the Master, without taxation, at the time the Master allows the debt of such creditor, unless the Master shall think that such costs ought to be taxed in the regular mode, in which case the same shall be so taxed by the Master, and the amount of such costs, or the sum allowed in respect thereof, shall be added to the debt so established.

(Signed) LYNDEHURST, C.
LANGDALE, M. R.
LANCELOT SHADWELL, V. C.
J. L. KNIGHT BRUCE, V. C.
JAMES WIGRAM, V. C.

It will be observed that the first of these Orders facilitates the means of obtaining an order to take the bill *pro confesso*, where the defendant avoids the process of the Court.

The second provides that *infants* not appearing or answering a bill, shall have a guardian assigned upon proof of the fact of infancy, and of service of notice as well

on the person in case of the infant, as on the parent or guardian.

The third enables the plaintiff to effect service of notices at the dwelling-house or office of a defendant who has not appeared after due service of subpoena.

The fourth Order further suspends the first five Orders of August relating to the solicitors' residence book; and the next suspends the twenty-second Order of August.

The sixth Order amends the Orders of August, by dispensing with writs of execution; authorizing writs of attachment for disobedience to orders, and after fourteen days, writs of sequestration; providing also that a warning be given, on the service of an order, of the consequent writs of attachment and sequestration in case of disobedience.

The sixth Order also provides that the costs of a creditor on proving his debt shall be fixed by the Master, without taxation, unless he shall think the costs ought to be taxed in the regular manner.

EQUITY SITTINGS AT WESTMINSTER AND LINCOLN'S INN.

Our readers are aware that at the commencement of the present Term the Lord Chancellor, the Master of the Rolls, and the Vice Chancellor of England, took their seats as usual at Westminster, but the Committee Rooms in which Vice Chancellors Knight Bruce and Wigram sat last Term were wanted by the House of Commons; the latter Judges, therefore, were obliged to return to their temporary Court Rooms in the Old Square. This lasted two days, and produced "the most admired disorder." Notwithstanding the Lord Chancellor ironically ascribes to the Leaders of the Bar the power of ubiquity, it was found impossible to migrate with sufficient rapidity from Lincoln's Inn to Palace Yard. The business of the Courts must soon have stood still, for even if the numerous corps of silk-gowns could have been distributed, it would have been impossible for the principal members of the Junior Bar to discharge their duty.

A memorial was accordingly presented to the Lord Chancellor, signed very numerously, as well by the Senior as the Junior Bar, suggesting that all the Courts should sit in Lincoln's Inn, as in the time of Lord Eldon, until accommodation could be provided at Westminster. This memorial was presented to his Lordship on

Saturday, and Monday morning beheld all the Equity Judges in the Courts in which they are accustomed to sit during three-fourths of the year. Nothing can prove more strikingly than this state of things, the necessity of erecting a New Building for the permanent sitting of all the Courts in the neighbourhood of Lincoln's Inn.

NOTICES OF NEW BOOKS.

A Practical Treatise on the Law of Estates for Life. By Andrew Biset, of Lincoln's Inn, Barrister at Law. London: Stevens and Norton.

THE SCOPE of this work may be gathered from the following analysis of its contents: 1st. The definition of an estate for life, and of a freehold: 1. Estates for life absolute; 2. For life determinable. 2d. Estates tail after possibility of issue extinct. 3d. Curtesy: 1. Nature of the estate; 2. Of what a man may be tenant. 4th. Dower: 1. Its nature; 2. Quantity and quality of estate; 3. Modes of conveyance to prevent dower; 4. Protection against dower. 5th. The creation of estates for life, not by operation of law. 6th. Estates *par autre vie*. 7th. Forfeiture and alienation of estates for life. 8th. Merger as it affects estates for life. 9th. Exercise of powers by tenant for life. 10th. Renewal of leaseholds. 11th. Apportionment of rent and incumbrances. 12th. Estovers, emblements, and fixtures. 13. Waste by tenant for life: 1. Legal; 2. Equitable waste.

From Mr. Biset's introduction and general division of the subject, we extract the following:—

"The feudal estates, *beneficium*, fiefs or fowds, throughout Europe, appear to have been held originally during the pleasure of the superior or lord, then for a fixed or determinate period of one or more years, afterwards for life, and finally to have become hereditary.

The course of events, however, and the habits and wants of modern society in England, have tended to render life-estates more common than estates of any other kind. A large proportion of the estates in this kingdom, particularly the larger estates, are under strict settlement, and consequently in the possession of tenants for life. It becomes, therefore, a matter of some importance to know what are the rights and obligations of tenants for life; which inquiry is the subject of the following sheets.

"Estates for life may be divided, first, into two classes: 1. For the life of the tenant. 2. For another's life—*par autre vie*. The first of these classes is again subdivisible into two sub-

classes; the first deriving its existence from the operation of law, the second expressly created by deed or some other legal assurance. The whole may be exhibited in one view in a tabular form thus:—

I. For life of tenant.

I. By operation of law.

1. Estate of tenant in tail after possibility of issue extinct.
2. Curtesy.
3. Dower.

II. Not by operation of law.

II. For another's life—*par autre vie*.

There is also an important subdivision of estates for life not by operation of law, viz. into estates for life absolute, and estates for life determinable; the nature and effect of which will form the principal subject of the first chapter of this work.

There are some advantages in the method adopted by Mr. Biset, of collecting together the authorities, and treating on one branch of the law, as in the present instance, on estates for life. The practitioner who is engaged in cases of that kind, can more conveniently or readily refer to the particular subject he is considering, than in a work which treats of the law in general. On the other hand, however, where various questions arise, it is better to have one book of reference or authority than several. Nevertheless it is useful to the profession that both methods are pursued by legal authors, and that on questions of difficulty the practitioner may resort to either class of authors to complete his stock of knowledge. We think that Mr. Biset's work displays both learning and judgment.

A Selection of Leading Cases on various branches of the Law, with Notes. By John William Smith, Esq., of the Inner Temple, Barrister at Law. Maxwell & Son. 2d Edition.

WE are glad to find that the second edition of this valuable work has been completed. The utility of the plan, and its admirable execution, secured even to the first edition the approbation of the profession. The notes of the learned editor have been revised and greatly enlarged in this edition. The present volume contains the leading cases on the following important subjects:

Contracts, partly unperformed; disaffirming contracts; wife's contracts; notice of dishonour of bills; justification of libels; special damage by slander; statute of frauds in reference to deceit, and to leases; con-

veying freeholds is *future*; principal and agent; law of highways; law of fixtures; debt of a third person; life insurance; set off; incompetency of witness; evidence of entries against interest of party; admissions by trustee; payments discovered not due; contribution of tort-feasor; adverse possession; estoppel; legality of marriage; foreign judgments.

Having on former occasions fully noticed the merit of the work, we need now only recommend it as an essential addition to every law library.

NEW BILLS IN PARLIAMENT.

BARRISTERS IN IRELAND.

A bill "to amend the laws regulating the admission of barristers in Ireland," has been brought in by Sir *V. Blake*, Sir *T. Wilde*, and Lord *M. Hill*.

It recites that by an act passed in the 33d year of the reign of his Majesty King Henry the eighth, intituled, "An act touching mispleading and jcoyfailes," it is, amongst other things, enacted, that no person except a plaintiff or defendant shall in any matter act, or officiate as barrister in any of Her Majesty's four principal Courts in Ireland, but those who shall at one or several times have resided in one of the Inns of Court within the realm of England for the space of years, complete: And whereas by an act passed in the twenty-first and twenty-second years of the reign of his late Majesty King George the third, intituled, "An act to regulate the admission of barristers," it is amongst other things, enacted, that from and after the first day of Hilary Term, in the year of our Lord one thousand seven hundred and eighty-two, no person shall be admitted to the degree of barrister-at-law in Ireland who shall not have been received and admitted into the Society of King's Inns, Dublin, as a student, five years previous to the time of applying to be admitted to the said degree, in addition to the requisitions of the above recited statute. And whereas by an act passed in the fifty-fifth year of the reign of his late Majesty King George the Third, intituled, "An act for repealing the stamp duties on deeds, law proceedings and other written and printed instruments, and the duties on fire insurances and on legacies and successions to personal estates upon intestacies now payable in Great Britain, and for granting other duties in lieu thereof," and by the schedule thereto, a certain duty is made payable on the admission of any law student to any of the Inns of Court in Great Britain, entitled to confer the degree of barrister-at-law; And whereas by an act passed in the fifty-sixth year of the reign of his late Majesty King George the Third, intituled, "an act to repeal the several stamp duties in Ireland, and also several acts for the collection and ma-

nagement of the said duties, and to grant new stamp duties in lieu thereof, and to make more effectual regulations for the collecting and managing the said duties," and by the schedule thereto, a still higher duty is made payable on the admission of any law student into the society of King's Inns, Dublin, by the effect of which acts, applicants for a call to the Irish bar are unreasonably compelled to pay more than double the admission duty of those going to the English bar: And whereas by an act passed in the thirty-eighth year of the reign of his late Majesty King George the Third, intituled, "An Act to enable the Dean and Chapter of Christ Church, Dublin, and other persons therein named, to grant certain grounds in the city of Dublin to the Society of King's Inns, Dublin," the said Dean and Chapter, and the other persons named in the said act, did grant the certain grounds to the said society of King's Inns, for the purpose of enabling the benchers thereof to build a library, dining hall and chambers for their members, according to the institution of the royal founders (as the act recites); and the said Society of King's Inns is now, and for a considerable time has been, in a prosperous condition; provided with a suitable dining hall and chambers, as also with an extensive library, accommodations indispensable to a law student, and a want of which, at the time, doubtless suggested the passing of the above first recited act, compelling applicants for a call to the Irish bar to reside years complete, in one of the Inns of Court within the realm of England, but which act is now not only unnecessary by the accommodations aforesaid, but a hardship in connexion with the above second recited act, which obliges persons to be five years received and admitted as students into the Society of King's Inns, before they can successfully apply to be admitted to the degree of barrister-at-law in Ireland: And whereas it is but reasonable that the duty on Irish law students be equalized, and that they be preserved from all unnecessary and harassing hardships and difficulties, while, at the same time, it is by all means expedient and necessary that no person be admitted to the degree of barrister-at-law until duly qualified, and that a proper time be allowed so to do, but that it be left discretionary with each student whether he shall so qualify at one of the Inns of Court in Great Britain, or at the King's Inns, Dublin;

1. *Persons who have kept terms in England may be admitted to Irish Bar.*—Be it therefore enacted, that from and after the passing of this act every person of requisite age, on producing a certificate from the proper officer of having resided and kept terms within the realm of England as is now or hereafter from time to time may be necessary in order to be admitted to the degree of barrister-at-law in England, shall be deemed qualified for the same degree in Ireland, and entitled to be called to the Irish bar; and that every person of full eight years' standing as an admitted member of

student of the society of King's Inns, Dublin, who has or shall have at any time during the said period of eight years kept eight terms, as understood in that society, when such terms were being kept, and every graduate of Trinity College, Dublin, of five years' standing, as an admitted member or student of the said society of King's Inns, Dublin, after such degree shall have been obtained, and who has or shall have at any time during the said period of five years kept five terms, shall also be entitled to be called to the Irish bar, with the degree of barrister-at-law.

2. *Persons having kept certain terms may be admitted as special pleaders upon payment of certain duties of stamps.*—And whereas many students of great practical experience, and who have spent much time and progressed considerably in preparing for a call to the Irish bar, may see fit to be called to the English bar, and as a consequence, from high qualifications, might desire to practise as special pleaders; equity draftsmen and conveyancers, under an act passed in the forty-fourth year of the reign of his late Majesty King George the Third, intituled, "An act to repeal the several duties under the commissions for managing the duties upon stamped vellum, parchment, and paper in Great Britain, and to grant new and additional duties in lieu thereof," the fourteenth section of which act authorises members of one of the four Inns of Court, on taking out the certificates as mentioned in the schedule to the said act annexed, to practise as special pleaders, equity draftsmen and conveyancers, which said section is rendered partially inoperative by certain rules of all the Inns of Court competent to call to the bar; by which rules applicants for admission to the respective Inns are required to pledge themselves not to take advantage of the said act till they should have served as many terms as would entitle them to be called to the English bar; rules which have been censured by the Common Law Commissioners, in their sixth report, delivered the thirteenth March, One thousand eight hundred and thirty-four, as being "to them objectionable, and vesting in benchers a discretion very liable to abuse;" be it therefore enacted, that every person producing a certificate from the proper officer of having been eight years an admitted member or student of the society of King's Inns, Dublin, and of having kept eight terms, at any time, during the said period of eight years, shall be entitled to a certificate authorizing such person to practise as special pleader, equity draftsman and conveyancer in any part of Great Britain, on paying to the commissioners for managing the duties upon stamped vellum, parchment and paper, at the head office in London, a duty of three pounds sterling each year, for the first five years, and ten pounds sterling each succeeding year.

3. *Repeal of provision contrary to present act.*—And be it enacted, that all laws, statutes and usages now in force, relating to the admission of barristers-at-law in Ireland, inconsistent with or contrary to the provisions of this act,

shall be and the same are hereby repealed and annulled; provided always, that nothing in this act contained shall be so congruent as in any manner to prejudice the rights of those who have, previous to the passing of this act, paid duty, and been admitted both at the King's Inns, Dublin, and at one of the Inns of Court in Great Britain; and that such persons shall be entitled to be admitted to the degree of barrister-at-law in Ireland, in conformity to the laws, usages and statutes in force for that purpose, at the time they were so admitted and paid duty.

[It will be observed by the 2d section, that it is proposed to enable an Irish student to practice under the Bar as a conveyancer or pleader in any part of Great Britain. This is far "too bad." The Benchers, at present, have the power of withholding the annual certificate, which enables a conveyancer to practise in England. If this bill were to pass, that power would be at an end, and we might have the objectional ranks of the certificated conveyancers crowded by persons who had undergone no examination in the Law of Real Property, and were personally unknown to the legal authorities in England.]

PRACTICAL POINTS OF GENERAL INTEREST.

PROMISSORY NOTE.

To an action by the payee against the makers of a promissory note, the defendants pleaded that there was no consideration for the note, and that it was made subject to the condition that the defendant should not be called upon to pay the same, if they were not able, but that it should be renewed. There was an affidavit, that the plea was false. The Court set aside the plea on the ground of its being false and tricky, and calculated to embarrass the plaintiff. The Court will not interfere where the plea is merely false. *Miles v. Walls*, 1 Dowl. P. C. 648; *Couper v. Jones*, 4 Dowl. P. C. 592; but in this case Lord Abinger, C. B., said, "In these cases the pleas were good upon the face of them. Here the plea is both tricky and false, and framed with a view to embarrass the plaintiff. The plaintiff must demur, or if he reply, his replication is open to a demurrer. I think this is a proper case for the Court to set aside the plea." *Milford v. Finden*, 8 Mee. & Wel. 505.

"THE GRANDEUR OF THE LAW."

MARQUESSSES.

4. BROWNLOW OGCIL, Marquess and Earl of Exeter, and Baron of Burleigh.

This nobleman claims the same ancestor as the Marquess of Salisbury, and is descended from Thomas, the eldest son of Lord Burleigh by his first wife, Mary, the daughter of Peter Cheek, Esq.

To the title of Baron of Burleigh, to which he succeeded on his father's death, James I., on May 4th, 1605 (the same day he created his younger brother Earl of Salisbury) added that of Earl of Exeter. King George III. created the 10th Earl Marquess of Exeter, on February 4th, 1801.

5. GEORGE CHARLES PRATT, Marquess and Earl CAMDEN, Earl of Brecknock, Viscount Bayham, and Baron Camden.

The noble owner of these titles derives his descent from two great lawyers. Seldom have two members of one family attained to such high legal distinction; the father having held the office of Lord Chief Justice of England under George I., and the son that of Lord Chief Justice of the Court of Common Pleas, from which he was created Lord Chancellor, in the reign of George III.

The family was originally settled at Careswell Priory, near Cullumpton, in Devonshire, and Richard, the Grandfather of the Chief Justice, is stated to have been ruined in the civil wars, and to have sold the estate.

Sir John Pratt was a student at Oxford, and became Fellow of Wadham College. Having been called to the bar about the end of Charles II.'s reign he was created Serjeant, October 1, 1700; and was elected M. P. for Midhurst, in Sussex, in the third and fourth Parliaments of Great Britain.

On November 14, 1714, he was appointed a Judge of the King's Bench, in the room of Mr. Justice T. Powys; and on the resignation of Lord Chancellor Cowper, he was named as one of the Commissioners of the Great Seal, April 19, 1718. On the 15th of the following month he was elevated to the office of Lord Chief Justice of the King's Bench, in the hon-

oured possession of which he died on February 24, 1725.

By his first wife, Elizabeth, daughter and co-heir of the Rev. Henry Gregory, Rector of Middleton Stony, Oxfordshire, he had five sons and four daughters.

By his second wife, Elizabeth, daughter of the Rev. Hugh Wilson, Rector of Llandinam, Vicar of Trefegwyl, and Canon of Bangor, he had four sons and four daughters. The third of these sons was

Charles Pratt, who distinguished himself greatly at the Bar, and also in Parliament as member for Downton, in 1754. In 1758 he was appointed Attorney-General to George II., in the room of Sir Robert Henley, and was also chosen Recorder of Bath. On Jan. 23, 1762, he succeeded Sir John Willes, as Lord Chief Justice of the Common Pleas.

The period of his presidency over that Court is distinguished by the popular questions raised by John Wilkes, and his conduct in reference to them acquired for him the approbation and applause of the country. One of the first acts of the Rockingham administration was to raise him to the peerage (17th July, 1765) by the title of Lord Camden, Baron of Camden, Kent.

On June 30, 1766, he was advanced to the dignity of Lord Chancellor, on the resignation of Lord Northington, and executed the arduous duties of that high office with the most consummate ability, till his resignation on Jan. 17, 1770.

Mr. Butler states that his judicial oratory in the Court of Chancery was of the colloquial kind—extremely simple; diffuse but not dis-sultory. He introduced legal idioms frequently, and always with a pleasing and great effect. His manner, he adds, is very discernible in the anonymous "Treatise of the Process of Latitat in Wales," (published in Mr. Hargrave's Law Tracts,) of which his lordship acknowledged himself to be the author.

He was advanced to the dignities of Viscount Bayham and Earl Camden, on May 13th, 1786; and died April 18th, 1794.

By his wife Elizabeth, daughter and heir of Nicholas Jeffreys, Esq., of the Priory in Breconshire, he had two sons and four daughters.

The Marquessate, with the Earldom of Brecknock, was granted on the 7th September, 1812, to his eldest son and successor John Jeffreys, recently deceased.

6. CHARLES BRUDENELL-BRUCE, Marquess and Earl of AYLESBURY, Earl Bruce, Viscount Saverinake, and Baron Bruce.

There are also two Judges from whom the family of Bruce is descended. Robert de Brus, or Brives, a Justice of the Common Pleas and Chief Justiciary in the reign of Henry III., and Sir Edward Bruce of Kinloss, Master of the Rolls under James I.

The family are of Norman extraction. The first in England of the name came over with the Conqueror, and for his prowess was rewarded with large grants of land, the principal of which was the lordship of Skelton, in Yorkshire. His son married two wives, and by the second of them he acquired the lordship of Annandale, in Scotland. The greater part of the Skelton property descended to the issue of the first wife; and the whole of the Scotch to that of the second. Of these latter Robert de Brus, surnamed the Noble, was the fourth Lord of Annandale, and married Isabel, a lineal descendant of David I., King of Scotland. By her he had

Robert de Brus, who in 34 Henry III. was a Judge of the Common Pleas, and he is mentioned by Dugdale as taking fines from that date till Hilary Term, 42 Henry III. He is then mentioned in 45, 46 & 47 Henry III. as a Justice Itinerant through various parts of England; and with other Judges of the Common Pleas had an allowance of 40*l.* a-year. In 52 Henry III. he was appointed Chief Justice of the King's Bench, being the first who held that office after the abolition of the office of Chief Justiciary. He was allowed 100*l.* for his support.

In 39 Henry III. he was constituted Sheriff of Cumberland, and Governor of the Castle of Carlisle. In the wars of the Barons he firmly adhered to the King, and was, with him, taken prisoner at the battle of Lewes, in which he commanded the Scottish auxiliaries.

On the death of Margaret, Queen of Scotland, he was one of the Competitors for that crown with John Baliol; but the decision of King Edward I. (who had been appointed umpire) on Nov. 17, 1292, was in favour of the latter. Robert Bruce died in 1295, at his Castle of Lochnaben, at a great age, and was buried in the Abbey of Gisburne. Neither he nor his successor, the sixth lord of Annandale, would ever acknowledge the title of Baliol, and his grandson eventually recovered the kingdom, and was crowned March 27, 1306, by the title of Robert I.

The third son of Robert the Judge, was John, in succession from whom came Sir Edward Bruce of Kinloss, the Master of the Rolls.

He was second son of Sir Edward Bruce, of Blair Hall, and soon distinguished himself. In 1601 he was sent by King James VI. of Scotland, on a mission to Queen Elizabeth, during which he made such arrangements with Sir Robert Cecil, the Secretary of State, as greatly facilitated the peaceable accession of his royal master to the throne of England. He was rewarded by King James with a grant of the Abbey of Kinloss, and on Feb. 22d, 1603, was created Lord Bruce, of Kinloss, in Scotland. On the 18th May, 1603, he was constituted Master of the Rolls, and died Jan. 14th, 1610, as appears by the inscription on his monument in the Rolls Chapel.

He married Magdalen, daughter of Alexander Clark, of Balbernie, in Fife, Esq., and by her (besides two daughters) had two sons, of whom Thomas, the second son, (the eldest Edward, the second Baron, having been killed in a duel with Sir Edward Sackville) became third Baron, and was advanced to the title of Earl of Elgin, in Scotland, by Charles I., who also created him, on August 1st, 1641, an English Baron, by the title of Lord Bruce, of Worton, in Yorkshire.

His eldest son, Robert, was created by Charles II., on March 18, 1663-4, Earl of Aylesbury; whose grandson, the third Earl, dying in 1747, without issue, the title became extinct. But this peer having, during his father's life, been created Lord Bruce, of Tottenham, in Wiltshire, with a limitation to his nephew Thomas Bruce Brudenell, youngest son of his sister Lady Elizabeth Bruce, the wife of the

Earl of Cardigan, that title devolved on the said Thomas, who thereupon took the name and arms of Bruce; and in his person the Earldom of Aylesbury was revived, on June 8th, 1776. The Marquisate was added by George IV, on 17th July, 1821.

The family of Brudenell is descended from Sir Robert Brudenell, Lord Chief Justice of the Court of Common Pleas, in the reign of Henry VIII, who will be more particularly mentioned under the title of Earl of Cardigan.

Communications are requested to be addressed to "F. S. A.," care of the Editor.

Applications for RE-ADMISSION on the last day of Easter Term, 1842.

Ahbot, Edward, Canterbury; Van Dieman's Land; and on the Seas.
Bower, Charles, 7, Clifford Street; Paris; and Leicester Square.
Butler, James, Young Street, Kensington.
Dew, James Coster, Warwick.
Evans, William Martin, Gloucester.
Fretwell, Robert Rowell, 1, Staple Inn; Upper Islington Terrace; Finsbury Place South; and Tunbridge Rectory.
Green, William, Greenwich.
James, Henry George, Sherborne,

Lawrence, Thomas, Parsonage Cottage, Ombersley; Preston; and Droitwich.
Nixon, Francis, Fishpond Road, Stapleton.
Rowles, George Samuel Sargeant, 16, Sale Street, Cambridge Terrace; and Queen Street, Edgware Road.
Rymer, William Henry, 21, Liverpool Street; and 11, Chadwell Street.
Swann, John Wright, Withycombe Rawleigh; and Kingston-upon-Hull.
Tomlins, Thomas Edlyne, 4, Hatton Place, Cross Street.
William, Benjamin Price, Luton.

Added to the list by Judges' Order.

Cutten, Charles Edward, 3, Little George Street, Westminster; and Coburg Place, Kennington.

Duncan, John, 72, Lombard Street; George Street; and Brentwood.
Major, Thos., 11, Saville Row, Walworth Road.
Taylor, George Smith, Chester.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1842.

Clerks' Name and Residence.

Alcock, William, Skipton.
Attre, Thomas Augustus, 7, Featherstone Buildings; and Brighton.
Adney, Richard Leopold, 5, Warwick Court.
Adams, Henry, 8, Northumberland Street; Great Barton; and Pimlico.
Ansten, George Durrant, 5, Newman's Row, Coburg Place; and Great Dover Street.
Blagden, Richard, 4, Stafford Place, Pimlico; and Petworth.
Boniton, James, Pickering.
Barras, William, Leigh Street, Connaught Terrace.
Bridges, Charles, 47, Marchmont Street; and Birmingham.
Bannister, Edward, Alton; Howland Street; and Clarendon Square.
Brown, Robert, the younger, 7, Trinidad Place, Islington; and Barton-upon-Humber.
Bush, William Harrington, Bristol.
Barrs, Edward, Handsworth; and Birmingham.
Barber, Samuel Good, Worcester.
Bonsey, William Henry, Slough; Furnival's Inn.

To whom articulated, assigned, &c.

Henry Alcock, Skipton.
Thomas Attre, Somers Clarke, and John; Sidney M'Whinne, Brighton.
Thomas Leigh Teale Rendel, Tiverton.
Timothy Richard Holmes, Bury St. Edmunds.
Joseph Hanley Holmes, Bury St. Edmunds.
James Templar, Great Tower Street.
John Luttman Ellis, and William Hale, Petworth.
Thomas Boniton, Pickering.
William Clark, and Durley Grazebrook, Chertsey; assigned to R. Henry Baines, 13, Gray's Inn Square.
Solomon Bray, Birmingham.
John Richards, the younger, Reading; assigned to C. Ewens Deacon, Southampton; assigned to James Burton, Powis Place.
Robert Brown, the elder, Barton-upon-Humber.
John Bush, Bristol.
Samuel Carter, Birmingham.
William Laslett, Worcester; assigned to H. Maddocks Daniel, Worcester.
Thomas Tindal, Aylesbury.

[*To be continued.*]

EXAMINATION OF SOLICITORS.

Friday, 15th April, 1842.

I do hereby order and appoint, that Richard Mills, George Gatty, John Wainwright, and Henry Ramsay Baines, sworn clerks in Chancery, together with Edward Archer Wilde, Thomas Adlington, Robert Riddell Bayley, Michael Clayton, George Frere, Bryan Holme, William Lowe, Philip Martineau, Edward Rowland Pickering, John Teesdale, William Tooke, and Richard White, solicitors of the Court of Chancery; be examiners until the last day of Easter Term, 1843, to examine every person (not having been previously admitted an attorney of the Courts of Queen's Bench, Common Pleas, and Exchequer, or one of them) who shall apply to be admitted a solicitor of the said Court of Chancery, touching his fitness and capacity to act as a solicitor of the said Court. And, I do hereby direct, that the said examiners shall conduct the examination of every such applicant as aforesaid, in the manner, and to the extent pointed out by the order of the 27th day of July, 1836, and the regulations approved by me in reference thereto, and in no other manner, and to no further extent.

(Signed) LANGDALE, M. R.

SUPERIOR COURTS.

Vice Chancellor of England.

PRACTICE.—EXAMINATION OF WITNESSES DE BENE ESSE.

The Court will permit the examination of one defendant as a witness for another defendant, even before answer, if it can be shown that he is the only witness to the circumstances required to be deposed to, and that there is danger of his testimony being lost.

The bill in this case was filed on the 9th of March last, and a motion was now made on behalf of one of the defendants to be at liberty to examine another of the defendants as a witness *de bene esse*, upon the ground of his being the only witness who could prove the facts required to be substantiated, and of his being in a precarious state of health.

G. L. Russell for the motion, read an affidavit of the defendant's surgeon, in which it was stated that the deponent believed the defendant to be in a state of pulmonary consumption, and not likely to live long.

Rogers, *contrà*, said the application ought not to be granted *before answer*, as the defendant making the motion might, after ascertaining the evidence of his co-defendant, frame his answer accordingly.

The Vice Chancellor said, that as the deposition required related to circumstances within the knowledge of the defendant, only whose evidence was sought, the order must be made, and in the common form.

Harbidge v. Wigun, April 16th, 1842.

Vice Chancellor Wigram.

PARTIES.—PLEADING.—ANNUITY.—

LESSEES.

In a suit for the redemption of an annuity charged upon property which has been subsequently let for terms of years, the lessees ought to be made parties.

Secus, with tenants from year to year.

This was a bill filed for the redemption of an annuity, and for the re-conveyance of the property, upon which it had been charged, together with all its improvements. The plaintiff, who sued in *forma pauperis*, had charged the premises with the annuity, and conveyed them to a trustee, with power to sell or demise the same in case the annuity should be unpaid,—which turned out to be the case. The annuitant, thereupon, demised the property in his own name. One of the defendants, a Mr. Newman, purchased part of the property, and built houses upon it, which he demised to certain persons for terms of years.

Mr. Temple, for Newman, objected that his lessees ought to have been made parties to the suit.

Mr. Parker, *contrà*.

Sir James Wigram, V. C.—The rule is different as to tenants from year to year, and tenants holding under leases. The former, are not required to be made parties, in cases of this kind; inasmuch as their interest might terminate before the suit was ended. Lessees, however, holding under leases must be made parties.

Moody v. Hibbert, H. T., 1842.

Queen's Bench.

[Before the four Judges.]

SHERIFF.—BANKRUPT.—EXECUTION.

Where a sheriff's officer, more than two months before the issuing of a fiat of bankruptcy, seized the goods of the debtor under a fi. fa., but received a sum of money to leave the house, and did so within an hour after entering it: Held, that such seizure did not amount to a proper execution of the writ, and the goods of the debtor, therefore, passed to the assignees under the fiat which was subsequently issued.

This was an issue to determine the title to the goods of a person who had become bankrupt. It appeared that there had been an execution issued by the plaintiff against the goods of the debtor, and the sheriff went into possession on the 4th of August. The debtor paid the officer five guineas to leave the premises, and he went away within an hour after he had entered on the premises, and did not return there till the November following. In November a fiat issued against the debtor, and the messenger took possession under the fiat. The sheriff's officer entered at the same time, and claimed the goods as his, by virtue of the execution in the preceding August. The jury had given a verdict for the defendant.

Mr. Watson moved for a rule to shew cause why there should not be a new trial.

Mr. Justice Patterson.—The sheriff's man

got five guineas not to execute the writ. The execution cannot, therefore, be said to have been executed. The property, under such circumstances, did not become vested in the sheriff for the purposes of the execution creditor. It therefore passed to the assignees under the fiat. This case does not affect that of *Godson v. Sanctuary*,* where the execution had been regularly executed more than two months before the issuing of the fiat.

Rule refused.—*Houghton v. Justice*, E. T. 1842. Q. B. F. J.

Queen's Bench Practice Court.

AFFIDAVITS IN REPLY.—TAKING AFFIDAVIT OFF THE FILE.—COMMUNICATION WITHOUT PREJUDICE.

The Court will, under special circumstances, grant a rule for taking off the file an affidavit, containing matter disclosed in professional confidence, or for preventing that part of the affidavits from being read, but will not allow affidavits in reply to be used.

In this case, when taxation took place, certain matters were disclosed in the defendant's attorney's affidavit of increase, which the plaintiff's attorney answered. Besides this answer, he introduced statements of matters, which had passed, it was said, without prejudice, between the two attorneys, with a view to the settlement of the action.

Here now applied for a rule to shew cause why the defendant's attorney should not be at liberty to make an affidavit in reply, explaining the circumstances under which the attorney had received the communication in question. This, it was submitted, was not in controversion of the rule that affidavits in reply should not be allowed. This affidavit here proposed was rather in explanation than reply.

Coleridge, J., refused to allow the application in that form as being in contravention of the long established rule of practice, that affidavits in reply should be refused in any case. A rule, however, might be taken to require the other side to shew cause why the affidavit should not be taken off the file, or why that part to which the objection applied, should not be read. This would answer the purpose of the applicant, as the affidavit on which the present rule was obtained would disclose those objectionable parts.

Rule accordingly.—*Bury v. Church*, E. T., 1842. Q. B. F. C.

DISTRINGAS.—ATTEMPTS TO SERVE.—APPOINTMENTS.—CALLS.

Where the Court will grant a distringas, although the usual practice as to the number of calls and appointments has not been complied with.

Stammers moved for a *distringas* on an affidavit disclosing the following circumstances. The deponent stated that he had gone to the house of the defendant; had knocked at the

door, when a woman came to it. On inquiry of her, she stated that the defendant was out of town. Before he could make an appointment with her she shut the door. He continued knocking for nearly twenty minutes, but without any one coming. The next day he went to the house, and having been equally unsuccessful in obtaining admission at the front door, he went to the back door. At that he knocked, and after waiting some time, the same woman came; but as soon as she saw him, she shut the door and retired. He was, therefore, unable to make any appointment. Similar attempts were made, but equally unsuccessful, on subsequent occasions. The plaintiff's attorney wrote a letter to the defendant, and it was returned unanswered. Under these circumstances, it was submitted, that sufficient had been done to shew that the defendant was keeping out of the way to avoid the service of the writ of summons. That was all that was required of the plaintiff, to entitle him to the writ of *distringas*.

Coleridge, J.—I think that is enough. You may take the writ.

Rule granted.—*Anonymous*, E. T. 1842. Q. B. P. C.

Common Pleas.

SERVICE IN EJECTMENT.

Where there were two tenants in possession, S. & J., and service with regard to both had been effected by leaving the copies of declaration and notices in ejectment with their sisters upon the premises, and S., on the day before term, acknowledged the receipt of both sets of papers, saying that the declaration and notice served on the other person, whom he described as his under-tenant, had been given to him by J.; it was held that the lessor of the plaintiff was not entitled even to a rule nisi for judgment against the casual ejector, as against J.

Mr. Serjt. Channell moved for judgment against the casual ejector. There were two tenants in possession of the premises, Salter and Jones. The sister of Salter had been served with the declaration and notice on the premises, and on the day before term, the tenant had admitted that he had received the papers. With regard to Jones, similar service had been effected, but there was no subsequent acknowledgment of service by the tenant. It was sworn, however, that at the same time, when Salter had acknowledged the service on himself, he had stated that he had also received the copy of the declaration and notice, which had been served upon "Edward Jones, his under-tenant," and that he had handed it to his superior landlord. It was submitted, that there was fair ground to infer that Jones was only under-tenant to Salter, and that a sufficient case had been made out for a rule nisi.

Per Curiam.—Salter was not entitled to make any admission for Jones, and without his statement, your application is altogether without foundation. You may take your judgment as against Salter, but the service upon Jones is insufficient.

Doe d. Harris v. Roe, E. T., 1849. C. P.

* 4 Barn. & Ad. 256.

Judgments.

Before THE LORD CHANCELLOR.
 Mitford v. Reynolds, *appeal*
 Blundell v. Gladstone, *ditto*
 Allen v. Macpherson, *ditto*
 Bayden v. Watson, *et. & fur. dirs.*
 Ward v. Alsager—Ward v. Ward,
causes
 Peyton v. Hughes, *re-hearing*
 Herring v. Clodery—Ditto v.
 Sturgis, *appeal*
Before V. C. OF ENGLAND.
 Brydges v. Branfil

Before V. C. WIGRAM.
 Monk v. Earl Tankerville
 Leeming v. Sherratt, *f. dirs. & c.*

Pleas and Demurrers.

V. C. of England.
 University of Oxford v. Vars-
 sour
 S. O. Powney v. Blomberg, *dem.*
 Bryant v. Wildegton, *plea.*
 Waters v. Earl of Thanet, *dem.*
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 Chappelow v. Levason, *dem.*

V. C. Knight Bruce.
 S. O. Wilkins v. Bucknell, *2 dem.*
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 „ Trotter v. Durham Railway
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 „ Kay v. Holder, *appeal*
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 Ditto v. Milner, } *causes*
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 Tritchley v. Williamson, *ditto*
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 Wentworth v. Tubb, *ditto*
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PARLIAMENTARY INTELLIGENCE RE-
LATING TO THE LAW.

The following movements have been made during the past week in the Bills before Parliament concerning the Profession :

House of Lords.

Law of Merchants Amendment. [3d reading.
Forged Exchequer Bills. [For 3d reading.]
Annual Indemnity. [Passed.]
Lunacy Proceedings. [In Committee.]

House of Commons.

CERTIFICATE DUTY.

Petitions for the Repeal of this Tax have been presented from—

Birmingham,	Northallerton,
Derby,	Otley,
Doncaster,	Plymouth,
Dundee,	Shields,
Edinburgh,	York,
Leeds,	Wareham.

COPYRIGHT.

The Bill for the extension of the term of Copyright has made considerable progress in the Committee. Although Lord Mahon's proposition to extend the time for twenty-five years from the author's death was not carried, it was resolved that the present twenty-eight years should be extended to forty-two from the publication, being another fourteen years *absolutely*; and an additional seven years in case the author survived the forty-two years. We are glad that thus far the friends of literature have been able to succeed.

THE EDITOR'S LETTER BOX.

A correspondent observes, that the time is now drawing near when the subject of the petition from the Incorporated Law Society, recently presented to the House of Commons, must be, if at all, discussed in that House, and he suggests that now is the proper time for each one personally to impress upon the Members of that House the reasons which have induced the profession to present such petition, and to request the support of such Members to a motion for the introduction of the necessary provisions for our relief. We think the matter should, at least, be so brought forward as to ensure the attention of the House and obtain the opinion of the Government. There can be no difficulty in suggesting a tax of equal amount, in a form free from the objections which apply to the Certificate Duty: for instance, by a *small Registry Duty on all Professions and Trades*.

The further suggested Bills of "Gent. one, &c." shall be considered.

The communications of "Amicus;" B.; "Ad rem;" "Querist;" "A Subscriber;" "Sine qua non;" A. Y. S.; J. W. S.; "Fair-play;" Q. Q. Q.; R. W. S.; and "Jus," shall be attended to.

We regret that we cannot find room for the "Defence of the Certificate Duty," and many other papers, until next week.

The Legal Observer.

SATURDAY, APRIL 30, 1842.

———"Quod magis ad nos
Pertinet, et nescire malum est, agitamus.

HORAT.

THE INCOME TAX BILL.

WE have now the property tax bill before us, and its perusal has certainly not tended to lessen any of our objections to it. It is not very agreeable to see in black and white, the words in the 188th section, *viz.* "that this act shall commence and take effect from and after the fifth day of April, 1842, and, together with the duties therein contained, shall continue in force until the sixth day of April, 1845." It does not in any way tend to allay our anxiety in this matter to know that the poison has already begun to work—that the tax-gatherer is already weaving his meshes around us—that all our little earnings must now be reckoned up, not for any pleasing purpose of self-gratulation, putting by, or spending, but that we may find out what return we must make under this dreadful inquisition. It is not very pleasant to have to consider our receipts for the last three years, or the last year, with the view, not of finding out in what lawful and reasonable enjoyment we may indulge; what portion we may put by for a rainy day, or what debt we may be able to liquidate, but simply for the purpose of exposing all our concerns, of laying bare to the world what we have hardly ventured to tell ourselves, of handing over, it may be to the malignant eye of a professional rival, the inmost secrets of our whole progress in life. Neither is it an exalting task for the conscience, to pass our affairs through a review of this nature—to consider whether it be on the whole, more advantageous to make the best of our story or the worst—for there are always two ways of telling every story; to consider what we may fairly conceal, or what we may reasonably heighten; all

this we must shortly do,—for let our readers remember, that for every pound which they have received since the fifth of the present month, a day of reckoning will assuredly come. For what says schedule D? "Upon the annual profits or gains arising, or accruing to, any person residing in Great Britain, from any profession, trade, employment, or vocation; there shall be charged yearly for every twenty shillings of the amount of such profits or gains, the sum of *seven pence*." And how is this to be ascertained? We find the mode shortly referred to in schedule G.

"Every person carrying on any trade, manufacture, adventure, or concern in the nature of trade," is to state "the amount of the balance of the profits, upon a fair and just average of three years, or for such shorter period as the concern has been carried on."

"Every person exercising any professional employment, or vocation," is to state "the amount of the balance of the profits, gains, and emoluments thereof, within the preceding year."

And now let us see what deductions are to be allowed.

In estimating the balance of profits, and gains, no sum shall be set apart, or deducted from such profits or gains, for any disbursement, or expenses whatever, not being money wholly and exclusively laid out, or expended for the purpose of such trade, manufacture, adventure, or concern, or of such professional employment or vocation: nor for any disbursements, or expenses of maintenance of the parties, their families, or establishments; nor for the rent, or value of any dwelling house, or domestic offices, except such part thereof as may be used for the

purposes of such trade or concern, not exceeding the proportion of the said rent, or value hereinafter mentioned; nor for any sum expended in any other domestic or private purposes, distinct from the purposes of such trade, &c., or of such profession, &c.

These are the principal clauses of the bill, which we consider most likely to interest our readers. It is our duty to point their attention to them. It will be seen, that, if possible, the act will press more severely on professional men, than on tradesmen. In the latter, an average of the last three year's profits is to be the guide; while the professional man is to be mulcted according to the last year's profits, which are usually the largest. The tradesman, who lives in his house may deduct the value: the professional man is allowed no set-off for his residence, unless he carries on his profession in it, which, although done in some cases, is not usual. Nothing, therefore, is so hardly dealt with by the proposed income tax, as professional income. Under these circumstances, although we fear nothing will stop its progress, we must protest against it, as a measure unnecessarily, and even wantonly, harsh to the legal profession.

PRACTICAL POINTS OF GENERAL INTEREST.

RAILWAYS.

RAILWAYS, as will be remembered by our readers, have, by stat. 3 & 4 Vict. c. 97, been placed under the controul and regulation of the state; a penalty is incurred for opening a railway without notice to the board of trade, (s. 2,) and for obstructing the government inspector (s. 6.) Bys. 9, the board of trade may direct prosecutions to enforce the provisions of the acts forming railways, and servants belonging to these companies guilty of misconduct, may be fined or imprisoned by any justice of the peace (s. 13,) or he may send the case to be tried by quarter sessions, (s. 14,) and persons wilfully obstructing any engine or carriage so as to endanger the safety of the passengers, shall be guilty of a misdemeanour, and be liable to be imprisoned for two years, (s. 15.)

A case has recently been reported, under an indictment under s. 15 of this statute. The railway company had diverted an ancient highway, (and the defendant who lived close to the diversion) had indicted the company for making it, and whilst these disputes were going on, large quantities of earth and rubbish were found placed across the railway at the time of the diversion. The prosecutor's case was, that this had been done by the defendant, or by persons acting under his orders, wilfully and in order

to obstruct the use of the railway, and the defendant's case was on the other hand, that his men in the course of emptying barrows of earth and rubbish into a ditch near the railway had accidentally dropped part of the rubbish on the railway, and it was insisted, at all events, that there was no evidence to show that the defendant had done the act in order to obstruct and upset the carriages. *Maule, J.*, in summoning up the jury, told them, that if they believed that the rubbish had been dropped on the rails by mere accident, the defendant had not committed an offence within the act of parliament; but on the other hand it was by no means necessary, in order to bring the case within the act, that the defendant should have thrown the rubbish on the rails, expressly with a view to upset the train of carriages. If the defendant designedly placed these substances, having a tendency to produce an obstruction, not caring whether they actually impeded the carriages or not, that was a case within the act, and the jury was bound to convict. *Regina v. Holroyd*, 2 Moo. & Rob. 339.

NEW BILLS IN PARLIAMENT.

LAW OF MERCHANTS.

This is a bill to Amend the Law relating to advances *bond fide* made to agents intrusted with goods. It recites the 6 G. 4, c. 94, and that validity is given (s. 2) under certain circumstances, to contracts or agreements made with persons intrusted with and in possession of the documents of title to goods and merchandize, and consignees making advances (sec. 1) to persons abroad who are intrusted with any goods and merchandize, are entitled under certain circumstances, to a lien thereon, but that under such act and the present state of the law, advances cannot safely be made upon goods or documents to persons known to have possession thereof as agents only: and that by the said act it is amongst other things further enacted, (sec. 4) "that it shall be lawful to, and for any person to contract with any agent intrusted with any goods, or to whom the same may be consigned, for the purchase of any such goods, and to receive the same of and to pay for the same to such agent, and such contract and payment shall be binding upon and good against the owner of such goods, notwithstanding such person shall have notice that the person making such contract, or on whose behalf such contract is made, is an agent; provided such contract or payment be made in the usual and ordinary course of business, and that such person shall not, when such contract is entered into or payment made, have notice that such agent is not authorized to sell the same, or to receive the said purchase money:" and that advances on the security of goods and merchandize have become an usual and ordinary course of business, and it is expedient and necessary that reasonable and safe facilities should be afforded thereto, and that the same protection and validity should be ex-

tended to *bond fide* advances upon goods and merchandize as by the recited act is given to sales, and that owners intrusting agents with the possession of goods and merchandize, or of documents of title thereto, should in all cases where such owners by the said recited act or otherwise would be bound by a contract or agreement of sale be in like manner bound by any contract or agreement of pledge or lien for any advances *bond fide* made on the faith thereof: and reciting that much litigation has arisen on the construction of the recited act, and the same does not extend to protect exchanges of securities *bond fide* made, and so much uncertainty exists in respect thereof that it is expedient to alter and amend the same, and to extend the provisions thereof, and to put the law on a clear and certain basis.

It is therefore proposed to be enacted—

1. That any agent intrusted with the possession of goods, or of the documents of title to goods, shall be deemed and taken to be owner of such goods and documents, so far as to give validity to any contract or agreement by way of pledge, lien, or security *bond fide* made by any person with such agent so intrusted as aforesaid, as well for any original loan, advance, or payment made upon the faith of any consignment, deposit, transfer or delivery of such goods or documents, as also for any further or continuing advance in respect thereof, and such contract or agreement shall be binding upon and good against the owner of such goods and all other persons interested therein, notwithstanding the person claiming such pledge or lien may have had notice that the person with whom such contract or agreement is made is only an agent.

2. That where any such contract or agreement for pledge, lien, or security shall be made in consideration of the delivery or transfer to such agent of any other goods or merchandize, or document of title, or negotiable security, upon which the person so delivering up the same had at the time a valid and available lien and security for or in respect of a previous advance by virtue of some contract or agreement made with such agent, such contract and agreement, if *bond fide* on the part of the person with whom the same may be made, shall be deemed to be a contract made in consideration of an advance within the true intent and meaning of this act, and shall be as valid and effectual, to all intents and purposes, and to the same extent, as if the consideration for the same had been a *bond fide* present advance of money: Provided always, that the lien acquired under such last-mentioned contract or agreement upon the goods or documents deposited in exchange shall not exceed the value at the time of the goods and merchandize which, or the documents of title to which, or the negotiable security which shall be delivered up and exchanged.

3. But the statute is to be construed to protect only transactions *bond fide*, without notice that the agent pledging is acting without authority, or *malà fide* against the owner. Not to extend to antecedent debts, nor to authorize the agent to deviate from instructions.

4. Meaning of the term "document of title;" and when agent intrusted; and when in possession. Meaning of "advance on the faith of goods or documents;" and meaning of "contract or agreement;" and "advance." Possession *prima facie* evidence of intrusting.

5. Agent's civil responsibility not to be diminished. 7 & 8 Geo. 4, c. 29.

6. Agent making consignment, &c. contrary to instruction of principal, guilty of misdemeanor. 7 & 8 Geo. 4, c. 29.

7. Right of owner to redeem; or to recover balance of proceeds. In case of bankruptcy, owner to prove for amount paid to redeem, or for value of goods, if unredeemed.

PRESUMPTION OF SURVIVORSHIP.

DECISIONS OF THE COURTS OF LAW AND EQUITY.

Having in the last paper on this subject, (p. 470, *ante*,) stated the effect of the decisions in the Ecclesiastical Courts, we proceed now to the *Temporal*.

The first case is that of *Mason v. Mason*, 1 Mer. 308, which was heard by Sir *William Grant*, is remarkably similar to those of goods of *Selwyn* and *Wright v. Netherwood*. A father had made a will bequeathing property to all his children "who should be living at his death." The father and one of his sons perished together by shipwreck, and the question of course was whether the son was "living at his father's death." Sir *William Grant* (after observing that he thought the stress of argument in General *Stanwin's* case was in favor of the father's representatives, because there were two chances in their favor, namely, of the father surviving, and of both father and daughter dying at the same time, and only one against them, namely, of the daughter surviving,) addressing himself to the counsel for the plaintiff, who were the representatives of the deceased son, said, "In the present case, I do not see what presumption is to be raised; and since it is impossible you should demonstrate, I think that if it were sent to an issue you must fail for want of proof." However, the plaintiff's counsel still pressing for an issue, an issue was accordingly directed by his Honor, the result of which has not transpired.

The relative ages of the father and son do not appear in the report of the above case, nor does the proportion of their respective bodily powers. The grand principle pervading the decisions in the Ecclesiastical Courts, was here applied by Sir *William Grant*; that learned judge most clearly intimating, that it would be for the plaintiffs, the representatives of the party, who never had any interest in the property in dispute unless he was the survivor, to prove the fact of his survivorship, and he, at the same time, avoided the confusion into which the Ecclesiastical Judges had betrayed themselves, as above pointed out, by saying,

he did not see what presumption was to be raised.

The remaining authority is a case of *Sillick v. Booth*, 6 Jurist, 142, recently decided by Vice Chancellor *Knight Bruce*. Two brothers were lost in the same vessel on their voyage from Demerara, the one aged twenty-nine, the other twenty. His Honor said, "I think the Court need not necessarily presume that they both died at the same time, but that evidence may be admitted to shew which of them died first. From the evidence before the Master, it appears, that James was an older, more robust, and experienced mariner than Charles, and having regard to that evidence, I am of opinion that the Master was right in coming to the conclusion that James survived his brother."

It seems to have been in this case really unnecessary to determine the question; the property in litigation had been bequeathed to the two brothers, and their sister, and a grand-child of the testator, with benefit of survivorship, among them as expressed in the will, and the Court decided, upon the construction of the clause of accruer, that the sister was entitled to the whole as last survivor: the Vice Chancellor, however, delivered judgment upon both questions; a circumstance which is, perhaps, to be regretted. His Honor seemed justly repugnant to adopting the unreasonable supposition, that both brothers died at the same moment; he, however, omitted to take notice of the principle mainly established by the cases in the Ecclesiastical Courts, and corroborated by the great authority of Sir *William Grant*, and which had in fact been long ago, approvingly suggested by Lord Hardwicke, in *Hitchcock v. Beardsley*, West. ca. temp. Hardw. 445, of throwing the *onus* of proof on the representatives of the party to whom the debateable property did not originally belong. Now, though the decisions in the Ecclesiastical Courts were certainly not binding on Sir *K. Bruce*, yet being pronounced upon questions as to which they have common jurisdiction with the temporal, and which seem almost necessarily to require a uniform rule in both courts, they were, it should seem, entitled to much attention and respect. It must however, be observed that neither *goods of Murray* nor *Satterthwaite v. Powell*, was cited.

It is well worthy of remark, that in all the cases of this nature which have yet occurred, it was wholly unnecessary, if the principle of the Ecclesiastical Courts were correct, to determine which of the two sufferers was the survivor; that principle being alone sufficient to guide the decisions of the Courts; by its application, the perplexing question—the question which can never be satisfactorily solved—which mocks the ingenuity of man—is avoided; it is, therefore, matter of surprise, that a judge should reject a rule so simple, so reasonable, and, to a legal mind, so familiar, for the purpose of having recourse to vague and unsafe presumptions. It is apprehended that, independently of express authority, the principles

that a party must recover by the strength of his own title, and that the affirmative, and not the negative, is to be proved, are so generally diffused throughout the whole English law relating to conflicting claims, that the application of them to the cases in question, was not only prudent, but even peremptorily required. The representatives of *B.*, the deceased quasi-claimant, insist that he was next of kin of *A.* (the owner of property) immediately after the death of *A.* The affirmative of the issue between the parties, correctly understood, is, that *B.* survived *A.*, and unless the truth of this affirmative can be established, the Court must pronounce in favour of those next of kin as to whose survivorship there is no doubt, and whose claim can be rebutted only by proof of a superior. On the other hand, for the doctrine of presumption, it must be confessed, by reason of the isolated nature of the subject, that no analogical authority is to be found in the English law; and though the civil law acknowledges the doctrine, yet even there it is found to be but concurrent with the other principle: and it must be noticed that in *Mason v. Mason*, Sir *William Grant* said, that though there were many instances in which the principles of law had been adopted from the civilians by our English Courts, there were none that he knew of, in which they had adopted presumptions of facts from the rules of the civil law.

Passing by, however, the more legal nature of the principle adopted by the Ecclesiastical Courts, let us compare the abstract merits of the two doctrines; on the one side, we have a rule which is just, simple, and easy of application; on the other, a course of presumptions of endless variety, based upon neither justice, reasoning, or common sense, and often almost incapable of use. The mind of the arbitrator would, it is imagined, hesitate but little in a competition between such rivals. The preceding observations are applicable, it is true, to those cases only which can be disposed of by recurring to the principle above preferred; there may be cases to which that principle may at first sight seem inapplicable, yet, it is apprehended, that upon a closer observation of their nature, all will be found capable of being subjected to it. Suppose a bequest to the survivor of *A.* and *B.*; suppose that *A.* and *B.* were drowned together in the same ship; here it is true, that if the conflict were between the representatives of *A.* and *B.* alone, the principle above mentioned could not be applied, neither of them being the original owner of the property; but inasmuch as the intention of the donor was that the object of his bounty should be the survivor of the two, it behoves those who claim the benefit of the gift, to make out their title by proving that *A.* or *B.*, through whom they claim, survived the other, and, as neither can produce such proof, both claimants must fail, and the bequest must lapse; a result, it is conceived, which would be no less consistent with justice than with the intention of the testator. Again, suppose that *A.* and *B.* were joint-tenants;

here the question would seem more difficult, still, it is apprehended, the same principle might with correctness be applied; for as the heir of neither could prove that his ancestor had survived his companion, he could not be entitled to claim against the heir of the other; the share of which that other died seised, and yet, as the heir of each was, by common right entitled to the interest of which his ancestor died seised, he could not, except by the asserter of a superior paramount right, be deprived of that interest. Upon this latter example, happily, a valuable opinion is recorded. In *Bradshaw v. Toulmin*, 2 Dick. 633, Lord *Thurlow* said—"If two persons, being joint-tenants, perish by one blow, the estate will remain in joint-tenancy in their respective heirs." Whether the heirs of the two deceased would hold in joint-tenancy together, as intimated here, might admit of much curious argument: it is, however, highly satisfactory to be possessed of the above opinion from so great a Judge as Lord *Thurlow*.

Supposing, however, that there may be cases which cannot be governed by the principle above advocated, would it not be expedient to adopt some other, or others, which would include them, as necessity may arise, (for experience and reflection prove that the excepted cases must be extremely rare)? Or, if such a course be disliked, ought not the legislature to intervene, and relieve courts of justice from the vain tasks in which the enquiries under consideration must engage them? It seems, indeed, unworthy of the liberal and enlightened spirit, both judicial and legislative, which in this age has prevailed, to suffer the ownership of property to be dependent upon such hare surmises—surmises, to the result of which the unsuccessful party will never respectfully and contentedly accede—surmises, the declaration of which must always inflict natural pain upon the loser, when he sees by how slight a force his lot was swayed from opulence to beggary. In the reign of Elizabeth, a father and son were hanged in one cart, but because the son, by struggling longest, "shaking his legs," was supposed to have been the survivor, his widow was held entitled to dower, *Broughton v. Randall*, Cro. El. 503. Now, in the nineteenth century, any civilized man, any lawyer, who would not be heartily disgusted with the present promulgation of such jurisprudence as this? Yet, though bearing in itself a more ludicrous absurdity, is it in truth more intrinsically irrational than the doctrine above assailed? It certainly afforded more abundant ground for the presumption made.

In cases where the law has merely to regulate the devolution of the property of deceased persons, upon some arbitrary and substantive principle, where none is presented by nature, it ought to adopt some uniform and reasonable rule; it ought to prove itself deserving of the complacent commendation contained in one of its maxims, by which it is declared to be *summa ratio*. In cases where, having submitted the disposition and appointment of property to the will of its owner, it professes to ensure the fulfilment of that will, it under-

takes another task, namely, of providing that the intention of the disposer shall not be unnecessarily defeated; and, perhaps, even that his purpose shall not be effected, far less strained into effect, in cases where his intention would not warrant it; at least so far as by a certain and permanent rule, this end can be attained; and is it not clear to all, that, where the object of a testator's bounty dies with him, it is an unjust mockery to be sagely speculating whether his legatee survived him; since, in truth, if he did so, it is certain that, according to the real, the natural, and popular sense of the term, he did not survive? And does not this reproof apply to all cases of the like nature? In *Taylor v. Diplock*, Sir *John Nicholl* said, "If the Court resorted to the probability, of what the deceased would have done, could it be supposed that he would have allowed the whole of his property to have gone from his own brother and sister to his wife's relations?" (See, to the same effect, the passages already cited from the judgment of the same judge, in *Selwyn v. Selwyn*.) The same case affords a striking instance of the difficulties to which the application of the doctrine of presumption would give rise, and, by illustrating upon what a variety of facts the Courts would have from time to time to adjudicate, proves the expediency of rejecting a principle which would afford good grounds for the litigation of every case in which such a question occurred. In that case, evidence was given that, *four months before* the fatal event, the husband was afflicted with an asthma, and the wife active and bustling, and Sir *John Nicholl* observed, that, notwithstanding this, in a moment of danger, the timidity of her sex *might* overpower her, and that, though, at times, the husband *might* have suffered from an asthma, he yet *might*, in a moment of difficulty, have been able to exert himself with effect. A like example may be produced from the case of *Sillick v. Booth*. There the V. C. asked Mr. *Simkinson*, whether he intended his argument to go the length, that if a young man, being a good swimmer, and an old feeble man perish in the same vessel, it must be presumed that both died at the same time? And Mr. *Simkinson* replied that he did, because a young man might have trusted to his strength, and so have perished first; whilst the old man might have remained below in the cabin, or on some part of the wreck. These instances, and the argument used in General *Stanley's* case, that women would more probably be in the cabin, and, therefore, the water would overpower them before reaching the male passengers, whose more likely position would be on the deck, prove upon how slender, and sometimes unnatural reasoning, such decisions might turn, and afford a strong ground for rejecting these ill-founded presumptions. Their fallacy is further exposed, if we consider upon what a presumption the presumptions themselves are founded; it is invariably assumed, that the struggle which the more robust can longest support, is always made, whereas, it must be admitted, that the

more manly and courageous, and, therefore, the more active *compotes sui*, would often leap spontaneously into the wave, and meet at once the fate from which no human power seemed capable of withholding them; and even where no such voluntary destruction took place, and the struggle is actually endured by each, accident must variously determine at what periods the struggle of each is to be made.

It is submitted, therefore, that the proper answer to the question proposed at the commencement of this enquiry, is, that *no presumption whatever ought to be made.*

BANKRUPTCY PRACTICE.

PROOF OF DEBT.—COLLATERAL BILLS OF EXCHANGE.

THE following judgment, in bankruptcy, was recently given by Mr. Commissioner *Evans*. The importance of the decision, and the effects of his views, if generally adopted, upon a great number of transactions in which the lenders relied that they had much better security for their money than it appears they have, were strongly pressed upon, and admitted, by the learned commissioner.

It is not the intention of the creditor in the present case, to pursue the matter; therefore the public may have to wait some time before the law on the subject is fixed.

In this case, the creditor *A. B.* lent the bankrupt 1000*l.*, and he received from the bankrupt, seven bills of exchange amounting to 1,095*l.* 1*s.* 6*d.* The bills of exchange were drawn and endorsed by the bankrupt. The solicitor for the assignees opposed the reception of the proof, on the ground that the bills of exchange were a security, and must be sold before the creditor could prove. On behalf of the creditor, it was contended, that it was usual for creditors under similar circumstances to prove the original debt, and to exhibit the bills as securities. Secondly, that the bankrupt having endorsed the bills, that circumstance entitles the creditor to prove without selling the bills. With regard to the first position, *I can only say that no proof has been objected to before me on this ground since I have sat in this place.*

There can be no doubt, but that if a debtor, by way of collateral security, deliver a bill of exchange, or promissory note, to his creditor, without his name upon the paper, it must be disposed of as a pledge, and the produce applied to reduce the debt, the residue only of the demand being proveable under the commission. *Ex parte Troughton*; *Ex parte Smith*; *Ex parte Whittle*; *Ex parte Roberts*; 1 Cook's Bankrupt Laws, 124. *The Bank of England v. Newman*, Lord Ray. 442; 12 Mod. 241; Comyn, 57; *Ex parte Smith*, 2 Cor.

210; *Ex parte Martell*, 1 Rose, 329; *Ex parte Britten*, 3 Dea. & Chitty, 41.

I shall now consider what effect ought to be given to the indorsement by the bankrupt. It has been decided in *Ex parte Twogood*, 19 Ves. 229, that the mere fact that the bills have been indorsed by the bankrupt does not decide the question, and that if the transaction be one of discount, the proof ought to be made on the bills of exchange. In *Ex parte Burn*, 2 Rose, 55, a case precisely similar to the present, the Lord Chancellor (Lord Eldon) decided that the creditor having stated that he held these bills as a security was precluded from saying that they were not to be treated as a security because they were endorsed. However, in the case of *Ex parte Twogood*, the same learned Lord did not consider the form of this deposition conclusive against the creditor.

The principle that ought to govern all decisions upon this point is, that a creditor having the security of a third party shall avail himself of that security to the utmost, but that as to that part of his debt not covered by such security, he shall be in no better position than the other creditors of the bankrupt: but if a creditor for 1000*l.* have bills to the amount of 1000*l.*, and he can prove for his whole debt on the bankrupt's estate, and afterwards receive 10*s.* in the pound on the bills from the parties indebted to the bankrupts, and be still entitled to hold his proof for the 1000*l.*, the result will be, that if the estate pay 10*s.* in the pound, he will get the whole of his debt, but a creditor without security for 500*l.* will receive 250*l.* only, which appears to be most unjust, as they are both of them creditors for 500*l.* unsecured; and I cannot see any difference whether the part payment arises from a quantity of goods belonging to the bankrupt, or a debt due from one of his debtors to him. It appears to me that the indorsement of bills is merely evidence to prove that the transaction was one of discount; and if the amount of the bills were equal to the amount lent, I should think the indorsement, unexplained, to be conclusive evidence that the bills were discounted, and that the proof ought to be on the bills. In this case, not only has the creditor sworn that the transaction was not one of discount, but the amount of the bills exceeds the money lent and interest thereon. I am, therefore, of opinion, that the bills were deposited as a pledge, and that they must be sold before the proof can be made. *Ex parte Blusham*, 6 Ves. 449, and that class of cases only applies to proofs against third parties.

DEFENCE OF THE CERTIFICATE DUTY.

To the Editor of the Legal Observer.

MR. Editor,

WITHOUT controversy, it is conceded, that your agitation of the repeal of the certificate duty proceeds from the conviction that you are advancing the interests of the profession; but, as I have long presumed to differ from

you on this subject, permit me *once more* to trouble you, some of the law societies having petitioned for the repeal;—many and opposing arguments for which have been advanced in your columns, and hundreds of hard words have been expended, without convincing such obstinate persons as myself that it would be either desirable or just.

Adverting to your two last papers, and the agitating communications appended to them—you say, in the first, “we find there is some difference of opinion amongst the leading solicitors on the subject of the agitation, *at the present time* ;” but your correspondent T. W. H. goes farther, and says “the truth is simply this, the leading influential members do not feel the duty, and I have heard *many a rich attorney* say, he wished it were doubled, or even trebled.” Protesting against the scandal of being considered one of those “rich attorneys,” permit me, on the credit of T. W. H., to ask, if there is not some colour of disingenuousness in your observation, and in the note in a portion of your last publication, in which you state, that I stand alone in the defence of this duty? I know you will excuse the freedom of these remarks, and in order to propitiate, I concede that for more than twenty years the tax has signally failed in the object of the “lynx eyed attorneys” by whom it was originally patronized; but, then, I contend that the vicissitudes to which the law as a science, and the profession as a body, has, in the meantime, been exposed, furnish the reverse of a reason why the tax should be repealed.

Much stress has been laid by some of your correspondents on the circumstance of the certificate duty being a war tax. It cannot be denied that the war entailed a much heavier burden than it was ever expected we should be able to bear, and it may be said, with considerable truth, that it created our cotton and many other of our manufacturing interests, founding families of enormous wealth, realizing and employing capital of hitherto unexampled magnitude, and calling into existence a new and glittering state of things; but, looking on the reverse side of the picture, it has created a mass of squalid poverty; and what, perhaps, is more pertinent to the present subject, it has both deluged and diluted the profession. A great change has, indeed, taken place in our spirit and feelings—one which has a downward tendency, and its unsightly blossoms are fast ripening into fruits.

It is under such circumstances that the repeal of the certificate duty is sought for. Your correspondents would array the privileges of the profession against what, in such case, I call the rights of the public. They do not appear to see that the profession is a privileged class; that legislation has taken somewhat of a free-trade course, and that what are called class interests are jealously looked upon. They appear to forget that any man, without an apprenticeship, may be an architect, a carpenter, a butcher, or a tailor, the statute

of Elizabeth having long since been repealed; and that the inquiry *has been* made why he may not become a lawyer? The old-fashioned plea, setting up the interests of the public, has been repudiated in the above and scores of other instances, and the notion is daily becoming more popular that the public can and will take care of itself, without the intrusive aid of legislation. As a lawyer, I may dispute this, or claim an exception in favour of the law; but, when I see the profession struggling to rid itself of a tax, rightfully imposed, and legitimately continued, because it cannot be parted with, as one of the public, I have the right to look into the facts, and say to the profession, if it gets rid of the tax, it must relinquish its privileges. It may be asked, what are they, and what are they worth? Briefly it is answered—none but those who have served an apprenticeship—who have been examined and admitted, can practise as an attorney without exposure to penal consequences; here is exclusiveness, and whatever is exclusive is privileged.

It is the consciousness of privilege which sets up a substantial, though apparently an imaginary value, and throws a protection around its object—which irresistably sets up a code or standard for the rule and government of those who are fortunate enough to become its subjects, and denouncing all those who deviate from it; all which, when viewed through the lights and shadows of the prevailing notions of the day, are opposed, and are consequently considered as injurious to the public interest. As to their value, it will be sufficient to direct a glance at a large number of the profession, who are living witnesses of the ease and comfortable enjoyments which their professional position alone procures for them.

You, Sir, have long earnestly advocated the repeal, and have, at length, succeeded in getting up sufficient steam for two or three petitions—important ones, I admit—but I fancy, the apathy of which you have so long complained, still generally exists; nor am I aware that there has been any diminution in the number of those who are every term pressing into the profession as a field of remunerating emolument for their talents and their labours, evidently disregarding your estimate of their chances of obtaining it. This fact alone is conclusive, that no sane financier will, from any abstract or speculative love of justice, ever relinquish a tax which the Incorporated Law Society, in its petition, truly states produces 85,000*l.* a-year, and is carried down to Somerset House without the expense of the collector.

I know you abjure politics, but, by the appeal to the legislature, the question is become a public one; permit me, therefore, to say, that the time has nearly arrived when the hopes of your agitating correspondents, and my labours, must shortly cease, as the income

• About twenty petitions have been presented. *En.*

tax will, ere long, become the law of the land. I fancy, however, there are those who have looked forward to this measure as one which would strengthen their claims to the realization of their wishes;—if the income tax had been partially imposed, there might have been something in their notion; but, as it will be of general application, I confess myself blind enough not to see that the question of repeal is in any way affected by it, and, consequently, I fancy that the present is not a whit more favourable time than the past, for the repeal of this (financially considered) the most desirable tax we have—a better substitute for which, it will be a much heavier tax on the repealing genius of your correspondents to discover.

It has been said that every man owes a debt of obligation to his country: through your liberality, I have been partially enabled to discharge mine, without reference to politics or party, by the shew of opposition I have, for years, evinced to your advocacy of the repeal; and although you have reproved me for standing alone, I do not regret the having done so, even supposing it to be the fact, which I do not admit. As the world goes, I am aware that I write as a fool, but writing anonymously, it is no matter.

X. Y. Z.

MASTERS EXTRAORDINARY IN CHANCERY.

From 22d March to 22d April, 1842, both inclusive, with dates when gazetted.

Butt, William, Ryde, Isle of Wight. April 22.
Carter, Charles, jun., Bideford, Devon. April 5.
Cunnington, John, jun., Braintree, Essex. April 1.
Jennings, Thomas Robert, Evershol, Devon. April 12.
Pearse, John, Hatherleigh, Devon. March 29.

Titt, Charles Perceval, Wallop, and Broughton, Southampton. April 5.

Willis, Frederic, Leighton Buzzard, Beds. April 1.

DISSOLUTIONS OF PROFESSIONAL PARTNERSHIPS.

From 22d March to 22d April, 1842, both inclusive, with dates when gazetted.

Jeyes, F., and William Henry Smith, Chancery Lane, Attorneys and Solicitors. April 5.

Ling, Henry, and Frederick, Harrison, Attorneys, Solicitors, and Conveyancers. March 25.

Addendum.—To the notice of the Dissolution of the Firm of Atherton, Clarkson, & Whitaker, stated p. 416, *ante*, should be added, “so far as regards Nathan Atherton only,” as appears by the London Gazette of 1st March.

PRICES OF STOCKS:

Twisting, 26th April, 1842.

Bank Stock div. 7 per cent.	- - -	166½ a 6 ½ 7
3 per Cent. Reduced	- - -	91½ a ½ a ½ a ½
3 per Cent. Consols Ann.	- -	92½ a 2 a ½ a ½ a ½
3½ per Cent. Reduced Annuities	- -	109 a ½
New 3½ per Cent. Annuities	-	101 a ½ a ½ a ½ a ½
Long Annuities, expire 5th Jan. 1860	-	12½ a ½
India Stock div. 10½ per Cent.	- -	246 a ½
Ditto Bonds 3½ per Cent.	- -	21s. a 20s. pm.
Ditto New Annuities div. 3 per Cent.	- -	96½
Bank Stock for Account 26 May	- - -	167
3 per Cent. Consols for Account 26th May,		92½ a ½ a ½ a ½ a ½
Exchequer Bills 1000l. a 2½d.	40s. a 38s. a 40s. pm.	
Ditto 500l. do.	- -	38s. a 40s. pm.
Ditto Small do.	- -	38s. a 40s. pm.

ATTORNEYS TO BE ADMITTED.

Trinity Term, 1842.

[Continued from p. 508.]

Clerks' Name and Residence.

Bromhead, Jonathan Crawford, 7, Paulin's Row, Islington; Elington; and Gower Place.

Bower, Benjamin, 46, Great Ormond Street.

Bourne, Robert Hodgson, Woosingham; Lloyd's Square; and Wakefield Street.

Cadle, Edmond, 5, New Ormond Street; Grafton Street; and Tavistock Place.

Crabbe, William Richard, 37, Gloucester Street, Queen's Square; and East Wonford, Heavitree.

Chapple, John, 13, Upper Eaton Street; and Poole.

Carrick, Joseph, 17, Stamford Street; 4, Mary's Place, Park Road, New Peckham; and Brampton.

Carris, Benjamin, Osmondthorpe Cottage, near Leeds.

To whom articulated, assigned, &c.

Mark Anthony Réyroux, Old Broad Street.

William Tristram Keightley, Liverpool.

Christopher Rymér, Woosingham.

James Henry Dowling, Gloucester.

Harvey James, Exeter.

John Durrant, Poole.

John Lee, Brampton.

Mathew Bloome, Leeds.

Clarks' Name and Residence.

Clarke, Edwin, 3, Lower Baker Street, Pentonville; and Longton.
Colthurst, Henry, 57, Lamb's Conduit Street; Bristol; Chesterfield Street; Liverpool Street; and Calthorpe Street.
Cobby, Charles William, Brighton.
Challinor, William, Leek; Devonshire Street; and Queen's Terrace, Southwark.
Cooke, John, 14, Bedford Place; New Ormond Street; and Woburn Place.
Cripps, Francis, 5, Southampton Street, Bloomsbury Square.
Cobb, Joseph Richard, 34, Montague Square; and Brecon.
Carter, John Markham, 12, Charing Cross; and New Alresford.
Carr, Henry, York.

Dowell, Henry, Sunderland; Great Mary's Buildings; and 6, Constitution Row, Gray's Inn Lane.

Day, Alexander, the younger, 1, Southampton Buildings; Pentonville.

Ellicombe, John Bradford, 2, Henrietta Street, Covent Garden; and Exeter.

Eade, Joseph, Clapham Common.

Edmonds, George, Whittall Street, Birmingham.

Edmunds, James Heming, Northampton.

Edwards, Henry, 2, Millman Street; and Stamford.

Fowler, Edward, 15, Baker Street, Pentonville; and York.

Fletcher, John Stockton, Rochdale; and Wakefield Street.

Freston, William, Sheffield.

Fairfoot, Henry Spence, 25, Lloyd's Square.

Freeth, Thomas Jacob, 1, St. Ann's Villas, St. John's Wood.

Farmer, William Francis, 8, Lower Baker Street, Lloyd's Square; and Tudor Street.

Flint, Abraham Augustus, 1, Garden Place, Lincoln's Inn Fields.

Goodwill, David, the younger, Hull; and George Street, Euston Square.

Goy, Henry Cox, 24, Great Portland Street.

Gabriel, James Alexander, 5, Gray's Inn Sq.; and Calne.

Hawthorne, Reuben, 5, Stanhope Place; and Uttoxeter.

Hancock, Frederick, 24, Claremont Terrace; Shipton-on-Stour; and 5, Felix Terrace.

House, Samuel Wood, 36, Judd Street; and Mylne Street.

Hobbs, William, 1, Frederick Street; Reading; and 15, New Boswell Court.

Harrison, George, Barnsley.

Harle, Henry Boulton, Leeds.

Holmes, Samuel Battison, Kingston-upon-Hull; and on board of a certain vessel on a voyage from Hull to Bombay and back.

To whom articulated, assigned, &c.

William Clarke, Longton.

John William Cornish, Bristol; and Thomas Charles Cornish, Bristol.

William Furner, Brighton.

William Challinor, Leek; assigned to George Sawkins, Leek.

Richard Underwood, Ross; assigned to C. Gwillim Jones, Gray's Inn Square.

Henry Walker, Southampton Street.

John Jones, Glanbontdu; assigned to Edward Williams, Brecon.

John Dunn, and Edw. Hopkins, New Alresford.

Arthur William Tooke, Bedford Row; assigned to Thomas Ward, York; assigned to Francis Short, York.

George Stephenson, Bishopswearmouth; assigned to Joseph Young, Bishopswearmouth.

Edward Amos Chaplin, Gray's Inn Square.

Hugh Myddleton Ellicombe, Exeter; assigned to Charles Few, Henrietta Street.

William Henry Bellamy, Hereford.

Edward Wright, St. Mary's Row, Birmingham.

Thomas Cave Hall, Northampton.

Richard Newcomb Thompson, Stamford.

Nicholas Charles Gold, York.

James Richard Elliott, Rochdale.

John William Smith, Sheffield; assigned to John Thompson, Sheffield.

William Wright, Cloak Lane; assigned to H. Diggory Warter, Carey Street.

Augustus Henry Burt, Essex Street, Strand; assigned to William Pyne, Inner Temple Lane.

Shirley Forster Woolmer, King's Road; assigned to H. William Birch, King's Road.

Adland Welby, Uttoxeter; assigned to H. S. Westmacott, 1, Gray's Inn Square.

John Wilkinson, Hull.

William Goy, Barton-upon-Humber; assigned to William Hilliard Goy, Barton-upon-Humber.

Nathan Atherton, Calne.

Adlard Welby, Chapel-en-le-Frith; assigned to Henry Nethersole, 3, New Inn Buildings.

John Henry Clark, Shipton-on-Stour.

John Tregonwell King, Blandford.

John Richards, the younger, Reading.

George Keir, Barnsley.

Thomas Harle, York and Leeds.

John England, Kingston-upon-Hull.

[*To be continued.*]

" THE GRANDEUR OF THE LAW."

MARQUESSSES.

7. **FREDERICK WILLIAM HERVEY**, Marquess and Earl of **BRISTOL**, Earl Jermyn of **Horninghurst**, **Sussex**, and **Baron Hervey**, of **Ickworth**, **Suffolk**.

The founder of this family was **Osbert Fitz-Harvey**, *i. e.* the son of **Hervey**, who was a Judge in the reigns of **Richard I.** and **John**.

His ancestor **Robert**, a younger son of **Harvey** or **Hervey Duke of Orleans**, came over with the Conqueror, and received part of the spoil in the division of lands. **Osbert's** father was **Henry**, who distinguished himself in the Holy Land under **Richard I.**, and was held in much esteem by king **John**. His mother was

Alice, daughter to **Henry**, son of **Ivo**. In the 7 **Richard I.** **Osbert** is mentioned as a Justice in the **Curia Regis**, and two years afterwards as holding that office in the **Exchequer**. Fines are recorded as being levied before him from the 7 **Richard I.**, to the Octave of **St. Martin**, 7 **John**, about which time he died, leaving issue by his wife **Dionysia**, daughter of **Jeffery de Grey**.

From him descended **John Hervey**, who was created by **Queen Ann**, **Lord Hervey of Ickworth**, **March**, 23, 1703, and by **George I.** **Earl of Bristol**, **October 19th**, 1714. The Marquisate was added by **George IV.** 30 June 1826.

EARLS.

1. **THOMAS HOWARD**, Earl of **SUFFOLK** AND **BERKSHIRE**, **Viscount Andover**, and **Baron Howard**.

The Earldoms of **Suffolk** and **Berkshire** are two other peerages in the family, the ancestor of which was **Sir William Howard**, the Judge in the reigns of **Edward I.** and **Edward II.** mentioned under the title of **Duke of Norfolk**.

Thomas, the fourth **Duke of Norfolk**, (beheaded by **Queen Elizabeth**.) by his second wife **Margaret**, daughter and sole heir of **Thomas Lord Audley**, of **Walden** in **Essex**, **Lord Chancellor** under **Henry VIII.**, was father of **Thomas**, who was created **Lord Howard of Walden** in 39 **Elizabeth**, and **Earl of Suffolk**, in 1 **James I.**

His second son **Thomas**, (the eldest succeeding him as **Earl of Suffolk**.) was created **Lord Howard of Charlton**, by **James I.** (1621,) and **Earl of Berkshire**, by **Charles I.** (1626); and the two titles became united on April 22nd, 1745, in the fourth **Earl of Berkshire**, by the death of the tenth **Earl of Suffolk** without issue.

2. **GEORGE WILLIAM FINCH-HATTON**, Earl of **WINCHILSEA** AND **NOTTINGHAM**, **Viscount Maidstone**, **Baron Finch of Daventry**.

The first **Earl of Nottingham** was **Heneage Finch**, who was **Lord Chancellor** under **Charles II.**

His father, **Sir Heneage Finch**, knight, (**Serjeant at Law**, **Recorder of London**, and speaker of the **House of Commons**, in the reign of **Charles I.**.) was the fourth son of **Sir Moyle Finch**, **Bart.**, whose widow (only daughter of **Sir Thomas Heneage**) was created **Viscountess of Maidstone** (1623), and **Countess of Winchilsea** (1628).

The **Lord Chancellor** was born Dec. 23rd 1621, was educated at **Westminster** and **Christ Church, Oxford**, and studied the law in the **Inner Temple**. He was representative for **Canterbury** in the parliament that restored **Charles II.**, and distinguished himself so much in that character, and by his legal attainments, that on the 6th of June, 1660, he was appointed **Solicitor General**, and received the dignities of both knight and baronet. In the

next year he was elected treasurer, and Autumn Reader of the Inner Temple. His reading and feast continued for thirteen days, on the last of which he was honoured with the presence of the King and the Duke of York.

On May 10th, 1670, he became Attorney General; and on November 9th, 1673, was constituted Lord Keeper of the Great Seal. On January 10th, 1673-4, he was created Lord Finch of Daventry, and on December 19th, 1675, was appointed Lord Chancellor. In this office he continued till his death, which happened on December 18th, 1682, having been on May 12th, 1681, advanced to the dignity of the Earl of Nottingham.

"He was," says Blackstone, "a person of the greatest abilities and most uncorrupted integrity; a thorough master and zealous defender of the laws and constitution of his country; and endued with a pervading genius, that enabled him to discover and to pursue the true spirit of justice, notwithstanding the embarrassments raised by the narrow and technical notions which then prevailed in the courts of law, and the imperfect ideas of redress which had possessed the courts of equity."

He published the edition of Reports of Sir Henry Hobart, in 1671; and the Reports of his own decisions were published in 1725, by William Nelson, but the book is considered of no authority.

He married Elizabeth, daughter of William Harvey, Esq., and by her he had no less than fourteen children.

His eldest son Daniel, second Earl of Nottingham, succeeded in 1729 to the Earldom of Winchilsea, by the death of John, the fifth Earl, without issue.

His second son, Heneage, who was created Earl of Aylesford, will be mentioned under that title.

The name of Hatton was taken by Edward Finch, the sixth son of the second Earl of Nottingham, in pursuance of the will of Anne, daughter of Christopher, Viscount Hatton; and Edward's grandson, George William, succeeded to both the Earldoms by the death of George, the eighth Earl of Winchilsea, and the fourth Earl of Nottingham.

3. JOHN WILLIAM MONTAGU, Earl of SANDWICH, Viscount Hinchinbrook, and Baron Montagu, of St. Neots.

Sir Edward Montagu, the Lord Chief Justice of the Court of King's Bench and Common Pleas in the reign of Henry VIII. (for an account of whom see Duke of Manchester) was the ancestor of the Earls of Sandwich.

His grandson, Sir Sidney Montagu, (the youngest of the six sons of his son Sir Edward, and the brother of the first Earl of Manchester) was the father of Edward Montagu, who distinguished himself as an admiral, and commanded the fleet that brought over Charles II. to his kingdom; for which service he was immediately made Knight of the Garter, and on the 12th of July following was created Lord Montagu of St. Neots, in Huntingdonshire, Viscount Hinchinbrook, and Earl of Sandwich. As Vice Admiral of England he gained many victories, and his eminent services were only terminated by his death, on May 28th, 1672, in the action against the Dutch fleet, off Southwold Bay, in Suffolk. His body being recovered, he was honoured with a public funeral.

4. JAMES THOMAS BRUDENELL, Earl of CARDIGAN, Baron Brudenell, of Stanton Wyvill, Leicestershire, and a Baronet.

The ancestor of this family is Sir Robert Brudenell, who held the office of Lord Chief Justice of the Common Pleas in the reign of Henry VIII.

He was of an ancient family of considerable note in Oxfordshire, and was the second son of Edmund Brudeuall, Lord of the Manors of Raans, Colshill, Chalfunt, Burleys in Stoke, &c. by his second wife Philippa, daughter of Philip Englefield, of Finchinfield, in Essex, Esq.

Sir Robert was born the last year of Henry VI. (1461); was called Serjeant at Law in Michaelmas Term, 1504; and made King's Serjeant on October 25th following. The feast given by him and the other Serjeants appointed at the same time was held at Lambeth Palace. On April 23d, 1508, he was constituted one of the Judges of the King's Bench, in which Court he continued during the remainder of the reign of Henry VII. On the accession of Henry VIII. he was removed into

the Common Pleas (April 25th, 1509), of which Court he was raised to be Chief Justice, April 13th, 12 Henry VIII. (1521). In this office he died on January 30th, 1531, and was buried in the church of Dean, in Northamptonshire, under a beautiful alabaster monument, with an inscription.

He married, first, Margaret, daughter and coheir of Thomas Entwissell, of Stanton Wyvill, Esq., relict of William Wivil, of Stanton,

Esq., and had issue two sons; Thomas and Anthony.

His second wife; Philipps Power, brought him no children.

His great-grandson, Thomas, was raised to the degree of a Baronet in 1611, by James I., and created, April 26th, 1627, Lord Bradenell, of Stanton Wyvill, by Charles I. Charles II., on April 20th, 1661, advanced him to the rank of Earl, by the title of Earl of Cardigan.

Communications are requested to be addressed to "F. S. A.," care of the Editor.

SUPERIOR COURTS.

Rolls.

SHIPS REGISTER.—BILL OF SALE.—MORTGAGE.

A. having made an advance to the owner of a vessel who executed to him an absolute bill of sale of such vessel, pursuant to the Registry Act of the 3 & 4 W. 4, c. 55, the consideration for which was expressed to be the amount of A.'s advance: Held, that the transaction could only be treated in equity as a mortgage.

Held also, that the bill of sale containing an assignment of the stores and appurtenances belonging to the vessel did not comprehend the cargo.

This suit was instituted for the purpose of determining the respective rights and interests of the parties to the cause in a South Sea Whaler, called the Anne, and her cargo of oil, which was stated to be very valuable, brought home in July, 1839. It happened that George Birnie, one of the defendants being entitled to a moiety, or 32-64ths of the vessel in question, in the year 1837 requested of the defendant Horton an advance of 4,200*l.*, and for securing the re-payment proposed to make a bill of sale to Horton, of his moiety of such vessel, then being on her voyage to the South Seas, and to deposit with him a policy of insurance on the vessel for 3,000*l.* Bills were accordingly accepted by Horton, in favour of Birnie, to the amount of 4,200*l.*, which were taken up by Horton on arriving at maturity, and a bill of sale was executed on the 27th of July, 1837, in which it was stated that, in consideration of 4,200*l.* paid by Horton to Birnie; he (Birnie), had assigned to Horton 32 full 64th shares in the Anne, then on a voyage to the Southern Whale Fishery, to hold to Horton, his executors, &c., "to and for his and their own use for ever." On the 4th of July, 1839, (the Anne being then on her voyage home,) Birnie being indebted to the plaintiffs, assigned his 32 64th shares in such vessel, and in her stores, and all his moiety in the oil and head matter, and other cargo, brought home from her present voyage, subject to the mortgage to Horton for securing 4,200*l.*, upon trust to sell the same, and to

satisfy their own debt not exceeding 3,000*l.* On the 5th of July, the plaintiffs gave notice to Horton of the assignment to them; and on the 9th the vessel arrived with a cargo of oil, &c., and on the next day, the plaintiffs gave notice of their deed to the master of the vessel. Horton, however, obtained from the master, the ship and cargo, together with the certificate of registry. The present bill, was in consequence, filed, in which the plaintiff charged that the assignment to Horton was only by way of mortgage, and that it was improperly registered as an absolute assignment: and it prayed that an account might be taken of the cargo brought home by the said vessel, and of all monies received by Horton in respect of sales made of the moiety assigned to the plaintiff, and that he might be decreed to deliver up to the plaintiff such parts of the cargo as remained unsold, and that an account might be taken of all monies due on account of the mortgage to Horton; and that the said vessel might be sold, and Horton's mortgage satisfied out of the produce, and, if any surplus remained, that it might be paid to the plaintiffs.

Pemberton and Hall for the plaintiffs, contended, first, that it was evident from the nature of the transaction between Birnie and the defendant Horton, the assignment to the latter was intended only as a security to indemnify him against the bills accepted by him in favour of Birnie, and which were afterwards from time to time renewed; and, secondly, that the cargo of a whaler did not pass by an assignment of the ship, and there being no contract for including the cargo in the assignment to the defendant it was improperly taken possession of by him. They cited *the case of the Dunder*, 1 Hag. 121, and *Gale v. Lorry*, 5 Barn. & Cres. 156.

Turner, J. Russell, and Adam for the defendant Horton, said that the question as to whether the assignment to the defendant Horton was a mortgage or a sale, was a question for an issue, as was also the question as to what passed, whether the ship only or the ship and cargo; but they contended that as the Registry Act of 3 & 4 W. 3, c. 55, required that the names of all parties claiming an interest in a ship should appear therein, and as the defendant Horton was registered as the

sole owner, the assignment to him must be considered as an absolute sale. With respect to the cargo, that must be deemed part of the stores and as the ship with her stores and appurtenances, were assigned to the defendant, the cargo passed also. They cited *Speldet v. Lathmere*, 13 Ves. 588; *Battersby v. Smyth and others*, 3 Mad. 110; *Dean v. Mc. Glie*, 4 Bing. 45; *Curnvell v. Bishop*, 2 Cr. & J. 529; *Prosser v. Edmonds*, 1 Y. & C. 481; *Hammond v. Missingham*, 9 Sim. 827; *Ex parte Yullop*, 15 Ves. 60; *Floyer v. Lavington*, 1 P. Wms. 268; *Davis v. Thomas*, 1 Russ. & M. 506; and *Sharpe v. Gladstone*, 7 East, 24.

January 14th.—*The Master of the Rolls* said, if he could come to the conclusion as to whether the assignment to Horton was a sale or mortgage, there would be an end of the other questions, but he would look into the pleadings, and the authorities, and give his judgment on a future occasion.

April 18th.—His lordship delivered judgment this morning, and after fully stating the facts of the case, said, that the plaintiffs alleged the bill of sale to have been a security on the ship only, and that it did not give any interest in the cargo: and as it was admitted that the debt due from Birnie to Horton exceeded the full value of the ship, if there was no question as to the right of the defendant to an interest in the cargo, there was an end to all further dispute. There was no doubt that the transaction between Birnie and the defendant Horton was intended to be a security for the advances agreed to be made by Horton, and at the time the bills were accepted no such claim was made by Horton as was now set up. There was no evidence of any new agreement having been come to; and the payment for the stamps by Birnie, and the other circumstances, were all consistent with the notion of a security being intended, and not an absolute sale. Under all the circumstances then, his lordship was of opinion that the bill of sale given to Horton must be considered as a mortgage and not as evidence of an actual sale; but even if it could be considered as a conditional sale, Birnie would still have had a right to an account.

His lordship then referred to the act of 3 and 4 W. 4, c. 55, which provided that a bill of sale should only be valid under the circumstances therein mentioned, and stated that although the object of the act was to render the vendee, in a bill of sale, liable for any claims that might be made upon the ship, it might be questioned whether a party might not be entitled to an interest, although it did not appear by the bill of sale. That question, however, did not arise here, the only question being whether the defendant Horton had an interest in the cargo. [His lordship next read the words of the assignment, which were to the effect that the ship and stores, *with their appurtenances*, were assigned to the defendant Horton, and continued:] It was said that as the ship and stores had become the property of the plaintiff, the cargo followed as incidental to them; but the judgments of Lord *Stowell* and Lord *Eldon* had only gone to the length of saying that the word "appurtenances" related to such matters as were

incidental to the working of a ship, and he could not consider a cargo of this kind as incidental to the stores of the vessel. The cargo of a whale ship was obtained from time to time as opportunity offered, and was different from freight, because the owner of the vessel was under no obligation to complete the voyage. The plaintiffs were therefore entitled to the account they asked of a moiety of the cargo remaining unsold, and of the produce of so much as might have been sold.

Langton v. Horton, January 14th and 15th, and April 18th, 1842.

Vice Chancellor of England.

PRACTICE.—DISMISSAL OF BILL.—COSTS.

Where a notice of motion has been given to dismiss a bill for want of prosecution, and the plaintiff afterwards himself obtains an order to dismiss, for the purpose of saving the costs of the motion, the Court will, if required, make the order to dismiss on the defendant's application.

S. Miller, for the defendant, moved, pursuant to notice, to dismiss the bill in this cause for want of prosecution, the answer having been filed on the 6th of December last, and no proceedings since taken. The notice of motion was served on the 18th for the 21st, and on the evening of the 20th, the defendant's solicitor was served with the copy of an order purporting to be an order for the dismissal of the bill on the application of the plaintiff, and also a notice that if the defendant proceeded with his application, he would do so at the peril of costs.

The defendant, however, it was submitted, was entitled either to an order on his application for the dismissal, or to a direction that the costs of the motion should be costs in the cause.

The *Vice Chancellor* said he should make the order for dismissing the bill.

Carter v. Jones, April 22d, 1842.

PRACTICE.—RECEIVER.—COSTS.

The Court will not allow a receiver the costs of a motion for paying monies in his hands into Court, which he has been prevented from paying in, owing to his having neglected to pass his accounts.

This was a motion on the part of a receiver, that he might be at liberty to pay into Court, a sum of 750*l.* admitted by him to be in his hands, and arising from the sale of certain timber belonging to the estate in the pleadings mentioned. It appeared that the Master had reported certain balances to be in the hands of the receiver, on which he had charged him with interest; but to this report the receiver had excepted, and the exceptions were now pending.

Koe, for the receiver, said, the application was necessary, in consequence of his client's not being able to get the Master's report, so as to pay the money into Court, pursuant to the order.

Stuart, *contra*, said there was no objection

to the money being paid into Court, but as the motion was rendered necessary by the receiver's default, he must pay the costs of it.

The *Vice Chancellor* said, that if the receiver had chosen to conform to the order which directed him from time to time to pass his accounts and pay the balances in his hands into Court, he might have paid the money in question into Court, without any application for the purpose; but the object of this motion was to get rid, by a side wind, in case the exceptions should be allowed, of the interest on this sum, which might be charged against him, and he must, therefore, pay the costs of it.

Graves v. Hicks, April 16th, 1842.

Queen's Bench Practice Court.

SCIRE FACIAS.—RECITAL OF PREVIOUS SCI. FA.—OUTLAWRY.—SETTING ASIDE PROCEEDINGS.

Where a scire facias on a judgment is issued, after a previous sci. fa., it must recite that sci. fa. and the judgment signed thereon, though that sci. fa., has not been returned and filed; and where a sci. fa. is issued without such recital, any outlaw may, notwithstanding his outlawry, apply to set aside proceedings on the ground of the omission.

In this case a warrant of attorney had been given by the defendant, in the year 1827, on which on the 24th November, in that year, judgment was signed. On the 10th February, 1836, the judgment was revived by *scire facias*, and judgment was signed upon that writ, but neither the writ nor the return to it was filed or entered of record. The defendant was an outlaw, and having, in the course of the year 1841 returned to this country; on the 3rd of November, in that year, he was arrested on a writ of *ca. sa.*, issued upon the original judgment of November, 1827. Upon application to the Court, he was, however, discharged out of custody, upon the ground that there had been no revival of the original judgment. A new writ of *sci. fa.* was thereupon issued to revive the original of 1827; but in that writ, no notice was taken of that which had been issued in 1836. The defendant thereupon, obtained a rule *nisi* to set aside this writ, with costs, against which

Thesiger and Sir John Bayley now shewed cause. They contended that the defendant was not entitled to come to the Court for any purpose except that of sitting aside his outlawry. *Louker v. Holbeach*, 4 Bing. 419; *Aldridge v. Buller*, 5 Dowl. P. C. 733; 2 M. & W. 412, S. C., were cited in support of this proposition. *Hawkins v. Hall*, 1 Bevan, 73, shewed, however, that although an outlaw cannot come into Court to establish a demand, he might apply to set aside an attachment, irregularly issued against him, and it was upon the authority of this case that the defendant had been already discharged out of custody. It was urged, however, that this was not an application which came within the principle of that case, for that, while there the defendant was in

actual custody, here the plaintiff's proceedings would not affect his liberty. But even supposing the defendant was entitled to come to the Court, the objection could not be sustained, because the *scire facias*, and the return thereto, in the year 1836, never having been filed, the judgment thereon was irregular, and it would have been improper to notice it. The *scire facias*, now objected to, proceeded upon the judgment of 1827. *Chapman v. Bowlby*, 1 Dowl. P. C. (new series) p. 83.; 8 M. & W. 49, S. C., was cited.

Martin, in support of the rule. *Loukes v. Holbeach*, and *Aldridge v. Buller*, were distinguishable from *Hawkins v. Hall*, and the present case. In both of those cases, the defendant was taking some initiatory steps; whereas here, the defendant sought only to protect himself from the proceedings of the plaintiff. He was, therefore, entitled to come to the Court notwithstanding his outlawry. With regard to the form of the *sci. fa.*, the judgment of 1836, was regular, although it had not been filed, and it ought to have been set out; and the Court would not permit the plaintiff to avail himself of his own irregularity, if it were an irregularity, to get rid of his own proceeding. *Davis v. Norton*, 1 Bing. 133, shewed, that the judgment on the first *sci. fa.* ought to have been recited in the second. *Cur. adv. vult.*

Williams, J.—First, as to the form of the second writ of *sci. fa.* upon reference to Mr. Tidd's and to Mr. Chitty's Practical Forms, I find, that where a subsequent writ of *sci. fa.* is issued, it is the practice to notice what has been done on any previous writ to revive the judgment. And I think there is this short and obvious reason for it, that for any thing that appears, something may have been done which would affect the proceedings upon the second writ; and I may instance, part payment of the debt; I think, therefore, that this writ is informal on this ground. It was urged, that the judgment on the first writ of *sci. fa.*, was good for nothing, because it was not filed and entered of record. But no authority, in support of the argument, was cited, and whether the judgment might have been set aside on this ground, is not for me to inquire, because it stands as effective as any other judgment. With respect to the outlawry of the defendant, and his alleged incompetency to apply to the Court, all the cases are resolvable into this proposition, that if an outlaw is seeking to enforce any right of his own, he cannot be heard, but that, when he is protecting himself from the claims of others, the case is different. That was the distinction drawn by Lord Langdale, in *Hawkins v. Hall*, and I think there is good sense in it, and that I ought to abide by it.

Rule absolute, with costs.—*Walker v. Thellusson*, H. T. 1842. Q. B. P. C.

ISSUABLE PLKA.—WHAT.

The defendant being under terms to plead issuable in an action on a bill of exchange, of which it is alleged he is the acceptor,

does not comply with these terms by pleading a plea denying the acceptance of the bill, and alleging that the plaintiff gave more for it than a certain limited value.

This was an action on a bill of exchange, brought against the defendant as acceptor. The defendant had obtained time to plead, the term of pleading issuably being imposed by the Judge's order. The defendant pleaded that he did not accept the said bill, nor did the plaintiff give any greater value for the said bill than the sum of 10*l*. The plea concluded with a verification. Judgment was thereupon signed as for want of a plea. A rule *nisi* having been obtained for setting this judgment aside,

Martin shewed cause.—The plea was not an issuable plea; it was impossible for the plaintiff to take issue on it; and its real object was to entangle the plaintiff with difficulties. *Simpson v. Thompson*, 8 T. R. 71, shewed that an issuable plea must go to the merits.

Mr. *Chambers*, in support of the rule.—The judgment was irregular; and *Cooper v. Jones*, 4 D. P. C. 591, shewed that the mere fact of a plea being objectionable did not entitle a plaintiff to sign judgment. An issue on the merits might, however, be taken on this plea, because the defendant denied his acceptance of the bill.

Wightman, J., took time to consider.

Cur. adv. vult.

On a subsequent day,

Patterson, J., said that he had been requested by his learned brother to intimate his opinion that the plea was not an issuable plea, within the meaning of the judge's order.

Rule discharged.—*Myers v. Lazarus*, M. T. 1841. Q. B. P. C.

Common Pleas.

DEBT ON JUDGMENT.—PRODUCTION OF RECORD.—JUDGMENT.—COSTS.—RULE NISI.

Where in an action of debt on a judgment, the defendant having pleaded nul tiel record, the plaintiff sought to have judgment in the action, with costs, upon the production of the original record, the Court, upon application under the provisions of the 43 Geo. 3, c. 46, s. 4, refused to grant a rule absolute in the first instance, although notice of the motion had been given to the defendant.

This was an action of debt brought upon a judgment recovered against the defendant, for 1000*l*., in the month of July, 1839. The plaintiff sued as public officer of the Monmouthshire Banking Company, and the declaration in the present action was dated the 5th March, 1842, and was in the usual form: the defendant had pleaded *nul tiel record*.

Mr. Serjt. *Glover* now moved that the plaintiff should have judgment in the present action, together with the costs, the record of the judgment upon which the action was brought being ready to be produced in Court. Notice had been given to the defendant, of the plaintiff's intention to make this motion in its terms, but he did not now appear. Affidavits were produced in which it was sworn, that the delay in proceeding on the judgment in the original

suit, had been occasioned by various applications made by the defendant, and that a new action on the judgment was therefore requisite.

Tindal, C. J.—The object of the statute, (43 Geo. 3, c. 46, s. 4.) is that persons shall not rashly bring actions upon records of judgments recovered, and so create costs; and therefore the Court is to be applied to, in order that it may be seen whether the suit has been commenced upon a proper occasion. The action appears to have been properly brought in this case; but the plaintiff can only have a rule *nisi*, for the defendant may have some reason to shew why the costs should not be granted.

Rule *nisi* granted.—*Fraser, public officer v. Moses*, E. T., 1842. C. P.

Devonshire Spring Assizes.

EXTRA-JUDICIAL OATHS.

A magistrate is liable to an indictment for administering extra-judicial oaths contrary to the 5 & 6 W. 4, c. 62, s. 13.

This was an indictment, by which a magistrate for the county of Devon was charged with administering three several extra-judicial oaths within the meaning of the stat. 5 & 6 W. 4, c. 62, s. 13.

Cockburn and *Bere* for the prosecution; *Erle* and *Montague Smith* for the defence.

The facts of the case were briefly these. Mr. Nott, wishing to lay before the Bishop of Exeter, certain charges against the clergyman of the parish in which he lived, took down in writing the information of three individuals, who severally spoke to conduct unbecoming the character of a clergyman. To these writings the informants affixed their signatures, and Mr. Nott administered an oath in the customary form. The papers were subsequently laid before the Bishop, who refused to compel the reverend gentleman to answer the accusation brought against him, on the ground, that the magistrate had no right to administer the oath. One of the informants was at the time in the service of a lady, residing in the same parish with the defendant, and he having without the lady's knowledge, procured an interview with him, examined him touching the behaviour of the reverend gentleman at a party at his mistress's house, and enjoined silence as to the oath; the lady when she afterwards learned what had occurred, felt aggrieved, and at her suit the present prosecution was instituted.

The administration of the oaths was not traversed, but Mr. *Erle*, addressing the jury for the defence, endeavoured to bring them within the exceptions contained in the preamble of sec. 13, and insisted that they were made in a matter, the subject of a judicial enquiry as they were to be laid before the Bishop, whose spiritual jurisdiction over the whole diocese, was of the highest judicial character.

Coleridge, J., in summing up observed, that the administration of the oaths was not denied, and proceeded to shew, that they could

in no way be brought within the exceptions contained in sec. 13. The matter to which the informations related, was not at the time, the subject of any judicial enquiry, and it mattered not that they might thereafter have been made so. The learned judge then went through the other exceptions in that section, under neither of which he said he could bring the oaths.

The jury, which was special, under his Lordship's direction, found the defendant guilty, but with a recommendation to mercy.

The learned Judge, in passing sentence, observed that "the too frequent administration of oaths has, and cannot but have the effect of lessening their weight and authority, and so of diminishing the value of that security on

which the preservation of our lives, our characters, and our property depends. I think then, that the legislature did wisely in making this provision, and I cannot, therefore, consent to pass over the breach of it with a merely nominal punishment. This was either by fine or imprisonment." The learned Judge had a great objection to the former, which often ruined a poor man, but was unfelt by his richer neighbour. He was glad, however, that he could avail himself of the jury's recommendation, which would have the effect of considerably shortening the term of his imprisonment." The sentence of the Court was, that the defendant should be imprisoned for the term of one calendar month.

The Queen v. Nott, Esq.

Queen's Bench.

CROWN PAPER, *Easter Term, 1842.*

Middlesex	The Queen v. Lady E. Ponsonby and others.
	John Adams and others.
	Goodwin and others.
Lancashire	Inhabitants of Manchester.
Staffordshire	Inhabitants of Tipton.
Herefordshire	Inhabitants of Bodenham, (<i>Writ of Error.</i>)
Carmarthenshire	William Garpon Hughes and another.
Middlesex	The Guardians of the Poor of St. Luke.
Essex	The Churchwardens of Gange.
Hull	Inhabitants of St. Olave, Southwark.
Devon	Inhabitants of North Poorvé.
Dnrham	Thomas Wealands and others.
Middlesex	Inhabitants of St. Martin in the Fields.
Northampton	Inhabitants of Oundle.

EXAMINATION OF ATTORNEYS.

EASTER TERM, 5TH VICTORIA, 1842.

It is ordered that the several Masters for the time being of the Courts of Queen's Bench, Common Pleas, and Exchequer, respectively, together with Edward Archer Wilde, Thomas Adlington, Robert Riddell Bayley, Michael Clayton, George Frere, Bryan Holme, William Lowe, Philip Martineau, Edward Rowland Pickering, John Teesdale, William Tooke, and Richard White, Gentlemen, Attorneys, be, and the same are hereby appointed, Examiners for one year now next ensuing, to examine all such persons as shall desire to be admitted Attorneys of all or either of the said Courts; and that any five of the said Examiners (one of them being one of the said Masters) shall be competent to conduct the said Examination in pursuance of, and subject to, the provisions of the rule of all the Courts, made in this behalf in Hilary Term, 1836.

Approved by the Judges of the Court of Queen's Bench, 15th April, 1842.

F. DWARRIS.

Approved by the Judges of the Court of Common Pleas, 15th April, 1842.

ALEX. A. PARK.

Approved by the Barons of the Court of Exchequer, 15th April, 1842.

EDW. BENNETT.

PARLIAMENTARY INTELLIGENCE RELATING TO THE LAW.

Royal Assents.

22d April, 1842.

Forged Exchequer Bills.
Annual Indemnity.
Mutiny.

House of Lords.

Bills passed.

Law of Merchants.
Ecclesiastical Corporation Leases.
Incumbent's Leases.

House of Commons.

To enable Coroners to receive Bail for Man-slaughter.

Turnpike Roads.

Ecclesiastical Corporation Leases.

[For 2d reading.]

Incumbent's Leases.

[For 2d reading.]

Barristers (Ireland).

[Put off.]

Copyright.

[Passed.]

Law of Merchants.

[For 2d reading.]

THE EDITOR'S LETTER BOX.

The suggestion of "A Constant Reader," to deduct, in account, the amount of the certificate duty, was urged in one of the petitions.

The letters of A. W. W.; "A New Subscriber;" and A. have been received.

The Legal Observer.

MONTHLY RECORD FOR APRIL, 1842.

"Quod magis ad Nos
Pertinet, et nescire malum est, agimus."

HORAT.

SUMMARY OF RECENT DECISIONS.

THE present Summary closes the reports contained in the 23d volume, and a Table of Cases has been added in the form of a Digest, which, it is trusted, will afford the means of easy reference to all the decisions. Thus, all the cases relating to attorneys, costs, practice, pleading, &c., have been classed under their respective heads. Reference has also been made to the cases cited in the Articles relating to Real Property, &c.

ATTORNEY.

It is not a sufficient objection to an application for the usual order to tax a solicitor's bill, to say that the bill does not contain taxable items; but if there have been various dealings and transactions between the client and solicitor, which have led to accounts irrespective of the account for costs, the Court will not extend the order to the taxing of those accounts, but the client must file a bill. *Es parte Corbett*, 489.

See PRIVILEGED COMMUNICATION.

BANKRUPTCY.

1. A bankrupt, long before his bankruptcy, deposited a policy of assurance with a creditor to secure payment of a bond, and the creditor did not give notice of the deposit to the Assurance Company until after the bankruptcy: Held, that the transaction was protected by the act 2 & 3 Vict. c. 29. *In re Styans*, 458.

2. Where a sheriff's officer, more than two months before the issuing of a fiat of bankruptcy, seized the goods of the debtor under a *f. fa.*, but received a sum of money to leave the house, and did so within an hour after entering it: Held, that such seizure did not amount to a proper execution of the writ, and the goods of the debtor, therefore, passed to the assignees under the fiat which was subsequently issued. *Houghton v. Justice*, 509.

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CERTIORARI.

An indictment for perjury having been found at the assizes for Leicester, the Court refused to grant a *certiorari* for its removal to London, on a suggestion, that the truth of the evidence given by the defendant, depended upon the result of a long series of accounts, and that a point of law was likely to be raised in the case. *Regina v. Morton*, 430.

CHARITIES.

For the better administration of the charities in towns corporate, formerly administered by the bodies corporate, the Court approves of supplying the vacancies that have happened by death, or otherwise, in the number appointed in 1836, after the trusts of the bodies corporate ceased, especially as it appears to have been the will of the founders to have a number of trustees. *Re Hereford and Gloster Charities*, 427.

CONSTRUCTION OF ORDERS.

1. Where a charge for a debt was carried into the Master's office before the New Orders of August, 1841, came into operation, the creditor was held not entitled to interest under the 46th of those orders, although his claim was not established till afterwards, the words of that order being prospective, both as to the bringing in, and allowance of the charge; but he was allowed the costs of establishing his debt under the 47th Order. *Lady Traily. Kibblewhite*, 429.

2. Where a subpoena was issued before the New Orders of August, 1841, came into operation, but not served: Held, that such subpoena might be re-issued, and served with the memorandum at the foot required by the 14th or the New Orders of August, 1841. *Fendall v. Burch*, 428.

COSTS.

1. A person injured in a riot, the alleged result of a libel at a political dinner, who prosecutes the persons publishing the libel, is not

entitled to his costs as a "party grieved," under the 5 W. & M. c. 11. *Reg. v. Caldecott*, 462.

2. A Judge's order was obtained to set aside a regular judgment of *non pros* on payment of costs: Held, that by the term "costs" in such a case, the costs of the judgment, and of the application to set it aside, are meant.

Where in such a case, the judgment having been signed by the defendant, the attorney of the defendant refused to attend a peremptory appointment to tax such costs, it was held, that the Master might tax them at the nominal sum of 3s. 4d., on tender of which, the plaintiff might treat the judgment as being set aside. *Christie v. Thomson*, 479.

And see ATTORNEY; JUDGMENT; MORTGAGE.

DISTRINGAS.

2. Where the Court will grant a distringas, although the usual practice as to the number of calls and appointments has not been complied with. *Anon*, 510.

EJECTMENT.

1. Service in ejectment on the servant of the tenant on the premises, who subsequently stated, that she had delivered the declaration to her master, by whom an attorney was appointed to defend the action, was held sufficient for a rule *nisi* for judgment of the casual ejector. *Doe dem. Elderton v. Roe*, 430.

2. Where there were two tenants in possession S. & J. and service with regard to both had been effected by leaving the copies of declaration and notices in ejectment, with their sisters, upon the premises, and S., on the day before Term, acknowledged the receipt of both sets of papers, saying, that the declaration and notice served on the other persons whom he described as his under tenant, had been given to him by J.: It was held, that the lessor of the plaintiff was not entitled even to a rule *nisi* for judgment against the casual ejector, or against J. *Doe d. Harris v. Roe*, 510.

INSOLVENT DEBTOR.

A voluntary assignment of property made by an insolvent, within three months before the commencement of his imprisonment, though made for the benefit of all his creditors, is within the 7 Geo. 4, c. 57, s. 32, and is void as against the assignee of the Insolvent Debtors' Court.

A copy of a vesting order made by that Court, and sealed with the seal of the Court, but signed only by the deputy of the officer appointed to grant such orders, is admissible in evidence, under the 1 & 2 Vict. c. 110, ss. 46 & 105. *Jackson, assignee of Wright, v. Thomson*, 489.

JUDGMENT.

1. Where in an action of debt on a judgment, (the defendant having pleaded *nil tiel record*),

the plaintiff sought to have judgment in the action, with costs; upon the production of the original record; the Court upon application under the provisions of the 43 Geo. 3, c. 46, s. 4, refused to grant a rule absolute in the first instance, although notice of the motion had been given to the defendant. *Fraser v. Moses*, 527.

2. Where in answer to a rule *nisi* for judgment, as in case of a non-suit, it was sworn, that the action had been settled between the parties in the absence of the defendant's attorney, and there was nothing to shew that the compromise had been effected, with the object of defrauding the attorney of his costs; the Court discharged the rule, but directed the costs to be costs in the cause. *Payne v. Hurdale*, 463.

MORTGAGE.

1. In a suit for foreclosure against a mortgagee, a provisional assignee is not entitled to his costs up to the time of disclaimer, or of hearing, where it appears that he has been properly made a party; and that it was not the duty of the plaintiff to have dismissed the bill as against him, on payment of costs. *Cash v. Belcher*, 429.

2. A. having made an advance to the owner of a vessel, who executed to him an absolute bill of sale of such vessel, pursuant to the Registry Act of the 3 & 4 W. 4, c. 55, the consideration for which was expressed to be the amount of A.'s advance: Held, that the transaction could only be treated in equity as a mortgage: Held also, that the bill of sale containing an assignment of the stores and appurtenances belonging to the vessel, did not comprehend the cargo. *Langton v. Horton*, 524.

3. Where a mortgagee has a debt due from the mortgagor, exclusive of his mortgage debt, and joins with another creditor in instituting a creditor's suit, he does not by such proceeding render the mortgaged premises liable to any deduction on account of the costs of the suit. *Allen v. Aldridge*, 460.

MUNICIPAL CORPORATION.

The Lords of the Treasury have no jurisdiction to decide on the claim of a dismissed officer of a corporation to remuneration under the Municipal Corporation Act, but can only decide as to the amount.

Where a claim is presented to a town council, by which the right of the claimant to any compensation is decided, such total denial of a claim, is an adjudication on the claim, and the claimant cannot, after a lapse of six months, treat such claim as admitted under 5 & 6 W. 4, c. 76, s. 66. *The Queen v. The Mayor and Corporation of Sandwich*, 477.

OATHS.

A magistrate is liable to an indictment for administering extra-judicial oaths, contrary to the 5 & 6 W. 4, c. 62, s. 13. *Reg. v. Nott*, 527.

PARTNERSHIP.

Where a surviving partner, who is also executor, allows the capital of the deceased to remain in the business, and pays a portion of the profits less than his late partner, in his life, would have been entitled to, and also 5l. per cent. interest upon the capital of his partner and testator, to the widow and children: Held, notwithstanding, that the children of the deceased partner are entitled to enquiries and accounts respecting the state of the property at, and subsequent to the death of their parent, before the Court will decide upon the exact proportion to be accounted for. *Willets v. Blandford*, 475.

PLEADING (EQUITY).

In a suit for the redemption of an annuity charged upon property which has been subsequently let for terms of years, the lessees ought to be made parties. *Secus*, with tenants from year to year. *Moody v. Hibbert*, 509.

PLEADING (C. L.)

1. To an action of slander, the defendant pleaded Not Guilty. The words proved were used of the plaintiff in her character of servant, imputing to her improper conduct in walking and gossiping with a married man. Evidence was tendered at the trial to prove the truth of the words spoken, but held that it was not admissible. *Romsey v. Webb*, 490.

2. To a declaration in *assumpsit* by the public officer of a banking company under the 9 Geo. 4, c. 46, upon divers bills of exchange, the defendant pleaded a release by indenture executed by one *J. M.*, therein described to be the manager of the bank, and alleged that the said *J. M.* executed such indenture for and on behalf of the said company, and duly authorised in that behalf, and which execution by the said *J. M.*, as such manager, hath been since duly ratified and confirmed by the said company. Replication, that the said *J. M.* did not execute, as such manager, on behalf of the company; nor was the said *J. M.* authorised in that behalf, *modo et forma*: Held, upon special demurrer, that the replication was not objectionable on the ground of duplicity, or as involving a negative pregnant, and that it did not tender an immaterial issue in denying only the authority of *J. M.* to execute, because that in effect traversed the allegation of ratification. *Bell v. Tuckett*, 430.

3. The defendant being under terms to plead issuably in an action on a bill of exchange, of which it is alleged he is the acceptor, does not comply with those terms by pleading a plea, denying the acceptance of the bill, and alleging that the plaintiff gave more for it than a certain limited value. *Myers v. Lazarus*, 527.

4. In trespass, *quare clausum fregit*, the defendants sought to plead first, Not Guilty; secondly, not possessed; thirdly, that one *T.* was seised in fee of the close in question, who

demised to *B.*, who demised to *H.*, who became bankrupt, and that the defendants entered as his assignees; fourthly, a like plea, only stating that *H.* mortgaged to one *R.*, and continued in possession as tenant to *R.*, and that the defendants entered as the assignees of *H.*; fifthly, a like plea to the fourth, only stating that *H.* and *R.*, in order to defraud the creditors of *H.*, demised to the plaintiff: Held, that these were pleas which might be pleaded together, not being in contravention of the Statute of Anne. *Pym v. Grazebrook*, 463.

PRACTICE.

1. Where a notice of motion has been given to dismiss a bill for want of prosecution, and the plaintiff afterwards himself obtains an order to dismiss, for the purpose of saving the costs of the motion, the Court will, if required, make the order to dismiss on the defendant's application. *Carter v. Jones*, 525.

2. The Court will not allow a receiver the costs of a motion for paying money in his hands into Court, which he has been prevented from paying in, owing to his having neglected to pass his accounts. *Graves v. Hicks*, 525.

3. A second *sci. fa.* must recite the first and the judgment. *Walker v. Thelluson*, 526.

And see CONSTRUCTION OF ORDERS; DISTINGUISHING; EJECTMENT; JUDGMENT.

PRISONER.

Notice of an intended motion for the discharge of a prisoner under the 43 Geo. 3, c. 123, must be given ten clear days before the intended motion; and a notice of motion on the first day of term, given eight days before term began, was held to be sufficient, though the motion was not actually made until after ten days had expired.

Service of a rule *nisi* for the discharge of a prisoner, must be both on the plaintiff and his attorney; and where there are several plaintiffs, service on one is sufficient. *Bolton v. Allen*, 462.

PRIVILEGED COMMUNICATION.

The Court will, under special circumstances, grant a rule for taking off the file an affidavit containing matter disclosed in professional confidence, or for preventing that part of the affidavits from being read, but will not allow affidavits in reply to be used. *Bury v. Church*, 510.

PRODUCTION OF DOCUMENTS.

Where a bill is filed for an account of a trust fund, the plaintiff is not entitled to the production of accounts, or documents relating to the private affairs of the trustee, unless it can be shewn that such private accounts or documents in some way relate to the trust property. *Inman v. Tucker*, 460.

TRUSTEES.

The Court will not appoint a new trustee of

stock in place of one out of the jurisdiction of the Court, without a previous reference to the Master, although the facts all clearly appear by the petition, and are verified by affidavit. *Re Flood*, 429.

And see CHARITY.

WITNESSES.

1. The Court will not permit the parties in a cross cause to examine witnesses in such cause, after publication in the original cause has passed, and if any witnesses are so examined, their depositions will be suppressed. *Scott v. Pascoe*, 475.

2. The Court will permit the examination of one defendant as a witness for another defendant, even before answer, if it can be shewn that he is the only witness to the circumstances required to be deposed to, and that there is danger of his testimony being lost. *Harbidge v. Wigan*, 509.

WILL.

Where a bequest was made to the children of the testator's nephew James, and such nephew died in the life time of the testator without leaving issue, but there was another nephew named Henry, who had children living, at the date of the will and of the testator's death: Held, that the Court would not, without very strong grounds, determine the testator to have intended such bequest for Henry instead of James.

The Master, having reported in favor of Henry's children, and the Court having allowed the exception against this finding: Held, that new evidence might be given before the Master in support of the claim made by Henry's children, on the reference for reviewing his report *Daubenny v. Coghlan*, 461.

BANKRUPTCIES SUPERSEDED.

From 22d March to 12th April, 1842, both inclusive, with dates when gazetted.

Berriman, Thomas, Peckham Grove, and also of Montague Cottage, Southampton Street, Camberwell, Surrey, Builder. March 25.

Lewis, John, Hockley Colliery, Sedgley, Stafford, Coal Master, and Plumber and Glazier. April 12.

Morgan, William Byrt, Saint James, Gloucester, near the City of Bristol, Dealer in Woollen Cloths. April 5.

Sharpley, Jesse, Coates Grange, Elkington, Lincoln, Miller. March 22.

Stevens, John, James Street, Limehouse, Brick Maker. March 22.

BANKRUPTS,

From 22d March to 12th April, 1842, both inclusive, with dates when gazetted.

Arnold, Joseph Hayman, and William Henry Woollett, Clement's Lane, London, Ship and

Insurance Agents. *Edwards*, Off. Ass.; *Leigh*, George Street, Mansion House. March 22.

Barlow, Joseph, Lichfield, Ironmonger and Cutler *Bigg*, Southampton Buildings, Chaucery Lane; *Dyott*, Lichfield; *Haywood & Co.*, Sheffield. March 22.

Bedford, James, Westminster Road, Surrey, Ironmonger. *Lackington*, Off. Ass.; *Mayhew & Co.*, Carey Street, Lincoln's Inn. April 5.

Bennett, John, Manchester, Calico Printer. *Campbell & Co.*, Essex Street, Strand; *Fox*, Nottingham; *Atkinson & Co.*, Manchester. March 25.

Bill, Richard, Birmingham, Japanner. *Newton & Co.*, South Square, Gray's Inn; *Baker*, Birmingham. March 22.

Blake, John, Bridge Street, Westminster, Wine and Spirit Merchant. *Johnson*, Off. Ass.; *Dimmock*, Size Lane. April 1.

Bolton, David, Kingston-upon-Hull, Corn Merchant. *Ficks & Co.*, Gray's Inn Square; *Galbraith & Co.*, Hull. April 8.

Bonny, James, Liverpool, Tailor and Draper. *Evans*, Liverpool; *Kenyon & Co.*, Liverpool; *Oliver*, Old Jewry, London. April 8.

Bridle, John, Shepton Mallett, Somerset, Grocer and Tea Dealer. *Serrell*, Tokenhouse Yard; *Hyatt*, Shepton Mallett. April 5.

Brownlow, Richard, White Street, Finsbury, London, Silk Dresser and Hot Presser. *Groom*, Off. Ass.; *Lawrence & Co.*, Bucklersbury. March 22.

Buckley, Amon, Newton Moor, Chester, Grocer, Corn Dealer and Farmer. *Clarke & Co.*, Lincoln's Inn Fields. *Higginbottom*, Ashton-under-Lyne. March 22.

Buckton, John, Darlington, Durham, Grocer and Spirit Merchant. *Newburn & Co.*, Darlington; *Mewburn*, Great Winchester Street. April 12.

Busnell, William, Evesham, Worcester, Innkeeper and Wine Merchant. *Bell*, Bedford Row; *Cheek*, Evesham. April 5.

Cannabec, William, Camberwell Green, Camberwell, Surrey, Bookseller and Stationer. *Pennell*, Off. Ass.; *Fraser*, Furnival's Inn. March 22.

Carey, Francis, Nottingham, Hatter. *Belcher*, Off. Ass.; *Watson & Co.*, Falcon Square. April 8.

Carr, William, and John Coull Carr, Sunderland, Durham, Merchants. *Cuwelje & Co.*, Southampton Buildings; *Beenlyside*, Newcastle-upon-Tyne. April 1.

Carrington, Geo., Albion Street, Hyde Park, Horse Dealer and Livery Stable Keeper. *Green*, Off. Ass.; *Foster*, Jermyn Street, St. James's. April 8.

Chaloner, James, Chester, Currier and Leather Seller. *Philpot & Co.*, Southampton Street, Bloomsbury; *Maddock*, Chester. April 12.

Chapman, Frederick, late of Feenchurch Street, London, Wine Merchant, (now of Mansell Street, Middlesex.) *Graham*, Off. Ass.; *Lamb*, Bucklersbury. April 8.

Charnley, Thomas, jun., Preston, Lancaster, Innkeeper. *Easterby*, Preston. *Sharp*, Staple Inn. March 22.

Clarke, James, and Robert P. Clarke, Leeds, York, Music Sellers and Copartners. *Theobald*, Staple Inn. *Payne & Co.*, Leeds. April 8.

Cole, James Kettering, Northampton, Woolstapler. *Jacobs*, Off. Ass.; *Maule*, Huntingdon; *Egan & Co.*, Temple. April 8.

Cook, David, Liverpool, Rope Maker and Ship Chandler. *Armstrong*, Staple Inn; *Knapper & Co.*, Liverpool. April 12.

- Crossfield, Abraham, Wittechapel Road, and also of Highland's Farm, in the Hamlet of Comp, in the parish of Leyburne, Kent, Scrivener and Hop planter. *Edwards*, Off. Ass.; *Hindmarsh & Co.*, Crescent, Jewin Street, Cripplegate. April 8.
- Crowe, John, Sanderland, Durham, Innkeeper. *Shield & Co.*, Queen Street, Cheapside. *Preston*, Sandhill, Newcastle-upon-Tyne. March 25.
- Cunard, John, and James Ingram, New Broad Street, London, Merchants and Commission Agents. *Sharpe & Co.*, Bedford Row; *Harvey & Co.*, Liverpool. March 29.
- Darbyshire, John, and Samuel Pope, Manchester, and Clayton Bridge, Lancaster, and of the City of London, Calico and Mousseline-de-laine Printers. Messrs. *Baxter*, Lincoln's Inn Fields. *Sale & Co.*, Manchester.
- Darlington, William, Liverpool, Wine Merchant. *Fisher*, Liverpool; *Vincent & Co.*, Temple. March 25.
- Dawson, John, Tudeley, and Wm. Dawson, of Tonbridge, Kent, Contractors and Builders. *Turquand*, Off. Ass.; *Stevenson*, jun., Hanley, Staffordshire. April 12.
- Dean, John, Habergham Eaves, Lancaster, Cotton Spinner, and Powerloom Cloth Manufacturer. *Milne & Co.*, Temple. *Buck & Co.*, Burnley. April 19.
- Dickinson, Edmund Allgood, Pall Mall, Money Scrivener, and Boarding House Keeper. *Turquand*, Off. Ass.; Messrs. *Pocock*, Bartholomew Close. April 12.
- Dransfield, Richard, and George Dransfield, Lees, near Oldham, Lancaster, Cotton Spinners. *Makinson & Co.*, Temple. *Atkinson & Co.*, Manchester. April 12.
- Duckett, Henry, Ramsgate, Kent, Carpenter and Builder. Messrs. *Daniel*, Ramsgate. *Hawkins & Co.*, New Boswell Court. March 29.
- East, John, Kingsthorpe, Northampton, Carpenter and Builder. *Weller*, King's Road, Bedford Row; *Cox & Co.*, Daventry and Northampton. March 22.
- Edlin, Henry, Brighton, Sussex, Hotel and Tavern Keeper. *King & Co.*, Queen Street, Cheapside. April 12.
- Filmer, William, and William Smith Gooding, Osborne Street, Whitechapel, Brewers. *Gibson*, Off. Ass.; *Young & Co.*, Mark Lane. April 8.
- Firth, Thomas, Elland, Halifax, York, Maltster. *Emmett & Co.*, Bloomsbury Square; Messrs. *Alexander*, Halifax. April 5.
- Flintiff, John, Rastrick, Halifax, York, Innkeeper. *Richards & Co.*, Lincoln's Inn Fields; *Barber*, Bridghouse, near Halifax. April 5.
- Fowell, Francis Kirkham, and Edmund Thomas Craufurd, Bologne-sur-Mer, in the kingdom of France, and of Piccadilly, Middlesex, Wine Merchants. *Pennell*, Off. Ass.; *Pering & Co.*, Lawrence Poutney Place. April 1.
- Frankland, Elizabeth, Reading, Berks, Widow, Innkeeper. *Weedon & Co.*, Reading; *Hill*, Throgmorton Street. March 29.
- Gale, James, sen., and James Gale, jun., Love Lane, Shadwell, Middlesex, Rope Makers and Paint and Colour Manufacturers. *Gibson*, Off. Ass.; *Oliverson & Co.*, Frederick's Place, Old Jewry. March 22.
- Garcia, Samuel, Brydges's Street, Covent Garden, Shell Fishmonger. *Belcher*, Off. Ass.; *Lewes*, Albany, Piccadilly. April 1.
- Gladstone, Samuel Palmer, Crisp Street, East India Road, Poplar, Middlesex, Shipwright. *Whitmore*, Off. Ass.; Messrs. *Gole*, Lime Street. March 29.
- Goreley, Jeffery Daniel, Bristol, Toyman. *Bridges*, Bristol; Messrs. *Bevan*, Bristol; *White & Co.*, Bedford Row. March 22.
- Gough, Frederic William, Pencombe, Hereford, Dealer. *Smith*, Southampton Buildings, Chancery Lane; *Hammond*, Leominster. April 8.
- Graydon, Charles, St. Anne's Place, Limehouse, Middlesex, Ship Chandler and Timber Merchant. *Turquand*, Off. Ass.; *Gole & Co.*, Lime Street Square. March 25.
- Halliday, William, Liverpool, Innkeeper. *Wason*, Liverpool; *Milne & Co.*, Temple. April 12.
- Howard, Henry, Waltham Cross, Hertford, Innkeeper. *Johnson*, Off. Ass.; *Scott*, St. Mildred's Court, Poultry. April 5.
- Hillyard, Bailey, Bristol, Freestone, Coal and Timber Merchant. *Clarke & Co.*, Lincoln's Inn Fields; *Smith*, Bristol. April 1.
- Hopkins, William, Hanbury, Worcester, Currier and Leather Cutter. *Blower & Co.*, Lincoln's Inn Fields; *Foley*, Worcester. April 8.
- Jackson, Christopher, Clitheroe, Lancaster, Joiner and Builder. *Johnson & Co.*, Temple; *Hall*, Clitheroe. April 1.
- Jarrett, Arthur, Castle Street, Southwark, Hat Manufacturer. *Whitmore*, Off. Ass.; *Sheppard & Co.*, Cloak Lane. April 1.
- Johnson, John, Leeds, York, Tow Spinner. *Batty & Co.*, Chaucery Lane. *Shackleton*, Leeds. April 8.
- Jones, John Houghton, Manchester, Spirit Merchant. *Bower & Co.*, Chancery Lane; *Russell*, Manchester. April 5.
- Kilsby, Joseph, Road, Northampton, Shoe Manufacturer. *Low*, Staple Inn; *Becke*, Northampton. March 29.
- King, Edward John, Oxford, Manufacturer and Vender of Artificial Teeth. *Appleby*, Aldermanbury; *Thompson*, Oxford. March 22.
- Linstead, Elizabeth, Liverpool, Pawnbroker. *Chester & Co.*, Staple Inn; *Norris*, Liverpool. April 1.
- Little, Thomas, Wakefield, York, Commission Agent. *Tenney & Co.*, Kingston-upon-Hull. March 22.
- Lockley, John, Bilston, Stafford, Painter and Glazier. *Clarke & Co.*, Lincoln's Inn Fields; *Tees*, Shrewsbury. March 22.
- Lowe, Piers, Morley, Chester, Shoe Maker. *Adlington & Co.*, Bedford Row; *Nicholson & Co.*, Warrington. March 25.
- Magnus, Samuel, Dover, Kent, Slop Seller. *Bass*, Dover. March 29.
- Martin, Robert, Beccles, Suffolk, Carpenter and Cabinet Maker. *Read*, Halesworth; *Francis & Co.*, Monument Yard. March 29.
- Minty, Edward, Warminster, Wilts, Maltster and Corn Dealer. *Chapman*, Warminster; *Holme & Co.*, New Inn. April 12.
- Morris, Wm., Saint Clears, Carmarthen, general Shopkeeper. *Jones & Co.*, Crosby Square; *Peters*, Bristol. March 22.
- Morrison, George, Nottingham, Lace Manufacturer. *Taylor & Co.*, Great James Street, Bedford Row; *Hurst*, Nottingham. April 1.
- Nevill, John Wm., Bread Street, Cheapside, London, Manchester Warehouseman. *Whitmore*, Off. Ass.; *Heald*, Austin Friars. March 22.
- Nutt, Richard, Frome, Selwood, Somerset, Maltster. *Frampton*, South Square, Gray's Inn; *Miller*, Frome, Selwood. April 12.

- Nutt, David, Stratford Green, Essex, Merchant. *Alsager*, Off. Ass.; *Oliverston & Co.*, Frederick's Place, Old Jewry. March 25.
- Nutter, James, and William, Elliston, Cambridge. Brewers. *Adcock*, Cambridge; *Ashurst*, Cheapside. April 12.
- Nutter, James, Cambridge, Miller and Merchant. *Harris & Co.*, Cambridge; *Sharpe & Co.*, Bedford Row. April 1.
- Owen, John, Woolwich, Kent, Cowkeeper, and Milkman. *Whitmore*, Off. Ass.; *Willoughby & Co.*, Clifford's Inn. April 8.
- Palliser, Richard, Moorgate Street, London, Saddler and Harness Maker. *Groom*, Off. Ass.; *Wire & Co.*, Saint Swithin's Lane. April 8.
- Payne, William, Hand Court, Holborn, Victualler, *Lackington*, Off. Ass.; *Abrahams*, Lincoln's Inn Fields. April 12.
- Pickering, John, Loughborough, Leicester, Wine and Spirit Merchant. *Emmett & Co.*, Bloomsbury Square; *Hucknall*, Loughborough. April 12.
- Plowman, Thomas, Yeovil, Somerset, Saddler and Harness Maker. *Fennell & Co.*, Bedford Row; *Watts*, Yeovil. April 5.
- Rayne, William Robert, Haughton, Northumberland, Paper Manufacturer. *Meggison & Co.*, King's Road, Bedford Row; *Bruckett & Co.*, Newcastle upon Tyne. April 5.
- Reach, George, Bardwell, Suffolk, Miller. *Hawkins & Co.*, New Boswell Court. *Golding & Co.*, Walsham-le-Willows. April 5.
- Ricket, Henry, Henry Street, Pentonville, Dealer in Wine and Beer. *Alsager*, Off. Ass.; *Spyer*, Broad Street Buildings. April 8.
- Sanders, Francis, and Charles Sanders, Derby, Corn Merchants. *Adlington & Co.*, Bedford Row; *Moss*, Derby. March 22.
- Scott, Thomas, late of Tewkesbury, Gloucester, Innkeeper, but now of Barwood, Gloucester, Brick Maker. *Baylis*, Devonshire Square; *Winterbotham*, Tewkesbury. March 29.
- Smith, Edward, Southampton, Grocer, *Sandell*, Cheapside, London. March 29.
- Smith, Thomas, and Thomas Taylor, Worcester, Retailer of Boots and Shoes. *Blower & Co.*, Lincoln's Inn Fields; *Foley*, Worcester. April 12.
- Sneade, Samuel Cartwright, Wavertree, near Liverpool, Timber Merchant. *Owens*, Newtown, Montgomeryshire; *Mason*, Liverpool. *Willis & Co.*, Tokenhouse Yard. April 8.
- Steele, Edward, Manchester, Grocer and Provision Dealer. *Norris & Co.*, Barlett's Buildings; *Noris*, Manchester. March 22.
- Stringer, Robert, Great Yarmouth, Norfolk, Wine and Spirit Merchant, Ale and Porter Dealer. *Soyers*, Great Yarmouth; *Storey*, Field Court, Gray's Inn. April 12.
- Terry, Richard, Cheltenham, Gloucester, Brewer. *Boodle*, Cheltenham; *Blower & Co.*, Lincoln's Inn Fields. April 1.
- Thomas, Thomas, Leintwardine, Hereford, Miller, and Corn Factor. *Rogerson*, Norfolk Street, Strand; *Collins*, Hereford. March 25.
- Thornton, James, Leicester, Builder. *Lawton*, Leicester; *Taylor*, John Street, Bedford Row. March 22.
- Till, Henry, late of Chatham, Kent, now of Moulsham, Essex, Draper. *Green*, Off. Ass.; *Ashurst*, Cheapside. April 12.
- Till, Edward, Worcester, Butcher. *Beeke & Co.*, Lincoln's Inn Fields. *Hill*, Worcester. March 21.
- Turner, Richard, Manchester, Flour Dealer. *Bower & Co.*, Chancery Lane, *Barratt jun.*, Manchester. March 25.
- Turvill, Richard, Kingston-upon-Thames, Surrey, Baker. *Lackington*, Off. Ass.; *Addis & Co.*, Great Queen Street, Westminster. March 25.
- Vickers, William, Manchester, Ironfounder and Dyer. *Milne & Co.*, Temple. *Crossley & Co.*, Manchester. April 1.
- Wagstaff, Samuel, Saddleworth, York, Grocer, Corn and Provision Dealer. *Watson*, St. Swithin's Lane; *Johnson*, Pall Mall. April 1.
- Walker, Thomas, Monk Wearmouth Shore, Durham, Common Brewer and Merchant. *Moss*, Cloak Lane, London; *Brown*, Sunderland. March 22.
- Walker, Deane Samuel, Great Saint Helen's, London, India Rubber Manufacturer. *Graham*, Off. Ass.; *Mayhew & Co.*, Carey Street. March 25.
- Warren, James, Bristol, Merchant. *White & Co.*, Bedford Row; Messrs. *Bevan*, Bristol. March 22.
- Webb, John, Birmingham, Tailor and Draper. *Crowder & Co.*, Mansion House Place; *Ingleby & Co.*, Birmingham. March 22.
- Webb, William Robertson, Knightsbridge Terrace, Knightsbridge, Middlesex, Wine Merchant. *Groom*, Off. Ass.; *Wilde & Co.*, College Hill, London. April 8.
- Wickham, Hugh, Bristol, Linen Draper. *Frampton*, South Square, Gray's Inn; Messrs. *Daniel*, Bristol, or *Smith*, Bristol. March 25.
- Wild, Samuel, (otherwise called Samuel Wild Mellor) Manchester, Coal Dealer. *Wright*, New Inn; *Taylor*, Manchester. March 29.
- Williams, Charles James, and Edward Neville, Birmingham, Factors and Coffin Furniture Makers. *Tooke & Co.*, Bedford Row; *Unett & Co.*, Birmingham. March 29.
- Wood, John Alfred, Broomsgrove, Worcester. Chymist and Druggist. *Herbert*, Staple Inn, March 25.
- Winder, Thomas, Lancaster, Ironmonger, Brazier, and Tinman. *Holme & Co.*, New Inn; Messrs. *Baldwin*, Lancaster. April 1.
- Woodhead, Joseph, Duckmanton, Derby, Cattle Dealer. *Cuttingham*, Chesterfield; *Few & Co.*, Henrietta Street, Covent Garden. March 22.
- Wright, John, Wolverhampton, Stafford, Grocer, and of Lichfield, Stafford, Tailor and Draper. *Clarke & Co.*, Lincoln's Inn Fields; *Bennett*, Wolverhampton. April 1.
- Young, Edward, Birchington, Kent, Blacksmith. *Boys & Co.*, Margate; *Egan & Co.*, Essex Street, Strand. March 25.

FOR MASTERS EXTRA in Chancery; DISSOLUTIONS of Professional Partnerships; and Prices of Stock, see p. 530 ante.

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